



July 31, 2002

Ms. Betty Elam
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2002-4179

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166452.

The City of Haltom City (the "city") received a request for seven categories of information, namely, 1) copies of summaries of telephone calls made by two named city council members, 2) copies of summaries of telephone calls made by another named individual, 3) copies of certain open records requests, 4) information relating to a specified misdemeanor complaint, 5) copies of documents pertaining to criminal complaints filed or certain requests made by a named individual, 6) copies of documents relating to an investigation into a "leak of information," and 7) information relating to an escrow agreement. You state that, except for information responsive to request items 4 and 5, all of the requested information has been provided to the requestor. You further indicate that you do not maintain information responsive to request item 4 and parts of request item 5. You claim that portions of the remainder of information responsive to request item 5, which you highlighted, are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You indicate that you do not have information responsive to request item 4 and parts of request item 5, both of which relate to specified criminal complaints. In this regard, we note that a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds or to which it has access. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision No. 561 at 8 (1990). However, the Act does not require a governmental body to answer factual questions, perform legal research,

or create new information in responding to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Moreover, the Public Information Act (the "Act") applies only to information in existence at the time the governmental body receives the request for information. *See* Open Records Decision Nos. 452 at 2-3 (1986) (document is not within the purview of the Act if, when a governmental body receives a request for it, it does not exist), 342 at 3 (1982) (Act applies only to information in existence, and does not require the governmental body to prepare new information). You state that the requestor "is requesting the city to perform research or create information in items 4 and 5." Accordingly, we find that you need not respond to the request or parts of the request which you cannot in good faith relate to existing information.

You argue that the remainder of information responsive to request item 5, which you have highlighted, is excepted under section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You assert that the information responsive to request item 5 pertains to a case that the Haltom City Police Department closed with no arrest, conviction, or deferred adjudication. Accordingly, we conclude that you may withhold the highlighted information under section 552.108(a)(2).

However, we note that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See* generally *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). You state that you have released basic information to the requestor. Thus, except for such basic information, the requested information is excepted from disclosure under section 552.108(a)(2). Although section 552.108 authorizes you to withhold the requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code §552.007.

Finally, we note that some of the submitted information is subject to section 552.130. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Accordingly, we have marked the information that the city must withhold under section 552.130.

In summary, the city need not respond to requests for information the city does not possess. The city may withhold the highlighted information under section 552.108(a)(2). We have marked the information that the city must withhold under section 552.130. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 166452

Enc: Submitted documents

c: Mr. Tom Quinones
1720 North Beach Street, Suite 100
Haltom City, Texas 76111
(w/o enclosures)