



August 26, 2002

Mr. J. Michael Criswell
County Attorney
Swisher County
Courthouse
Tulia, Texas 79088

OR2002-4740

Dear Mr. Criswell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167596.

The Swisher County Sheriff's Department (the "department") received a request for copies of information relating to an incident that occurred on May 25, 2002 in Tulia, Texas. The Swisher County Justice of the Peace (the "court") received a similar request for the same information. The department indicates that it does not maintain any responsive information pertaining to requested videotapes, audiotapes, or 911 call listings.¹ The department states that it has released to the requestor some responsive booking information. The court indicates that it has released to the requestor some responsive information pertaining to citations and complaints. You claim that portions of the submitted information are excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

Initially, we address the information requested of the court. We note that the Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). It does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act. Gov't Code § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 ("function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act."). Because one of the requests for information in this instance was received by the court, any responsive information that would be produced by the court would not be subject to the Act. *See* Gov't Code § 552.003(1)(B). Accordingly, we conclude that the responsive information that we have marked constitutes records of the judiciary that are not subject to the Act. *See* Attorney General Opinion DM-166 (1992). We note, however, that as records of the judiciary, such responsive information may be made public by other sources of law. *See* Attorney General Opinions DM-166 at 2-3 (1992) (public has general right to inspect and copy judicial records), H-826 (1976); *see also* Open Records Decision No. 25 (1974); *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released).

You claim that portions of the information at issue maintained by the department are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2). Section 552.108(a)(2) protects records pertaining to a criminal investigation or prosecution that concluded in a final result other than conviction or a deferred adjudication. You state that the information maintained by the department relates to cases that were refused by the special prosecutor and not filed. We, thus, understand the department to argue that this particular information pertains to cases that have concluded in final results other than conviction or deferred adjudication.

However, we note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe

such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). See Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public). Accordingly, with the exception of basic information that must be released to the requestor, we conclude that the department may withhold this particular information from disclosure pursuant to section 552.108(a)(2) of the Government Code. Because we base our decision on section 552.108(a)(2), we need not consider your other claimed exceptions to disclosure.

In summary, the responsive information that we have marked is held by the court and is not subject to the Act. With the exception of basic information that must be released, the department may withhold from disclosure the information that we have marked that has not already been released pursuant to section 552.108(a)(2) of the Government Code.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 167596

Enc. Marked documents

cc: Mr. Gary O. Gardner
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(w/o enclosures)