



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 7, 2003

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Houston, Texas 78773-0001

OR2003-3071

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180662.

The Texas Department of Public Safety (the "department") received a request for criminal intelligence documentation related to the Ku Klux Klan since 1990. You claim that the requested criminal intelligence files are excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative samples of information.²

At the outset, we address the department's obligations under section 552.301 of the Government Code. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information that the governmental body wishes to withhold. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982).

¹You state that, to the extent it exists, you will release the remaining responsive information to the requestor.

²We assume that the "representative samples" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You state that the department received the request for information on February 5, 2003. On February 18, 2003, the department asked the requestor to clarify his request. *See* Gov't Code § 552.222(b) (authorizing governmental body's request for clarification of records request). Thus, the ten-business-day deadline for requesting a decision from this office was tolled on February 18, 2003. *See* Open Records Decision No. 663 at 5 (1999) (providing that ten-business-day period is tolled during clarification process). You state that on March 5, 2003, the department received clarification from the requestor; consequently, the ten-business-day period resumed on March 6, 2003. Thus, the deadline for the department to request a decision from this office was March 10, 2003.³ You submitted and we received your request for a decision from this office on March 5, 2003. Accordingly, we conclude that you timely requested a decision from this office pursuant to section 552.301 of the Government Code.

Section 552.108 of the Government Code provides in pertinent part as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). To claim this aspect of section 552.108 protection, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990).

You assert that the release of the submitted information would interfere with law enforcement. You state that the submitted records are maintained by the department's Special Crimes Service and that

[t]he Special Crimes Service identifies crime problems and persons involved in criminal activities; analyzes criminal information in order to provide operational units of the Department and other law enforcement agencies with necessary data to investigate criminal activity; obtains investigative leads; locates evidence or wanted individuals; and identifies perpetrators and eliminates suspects in unsolved offenses.

Further, you explain that "[a]lthough a Special Crimes file may be opened in connection with a specific criminal investigation, the file is not closed once an arrest is made and the case is prosecuted" and that "[b]ecause the underlying criminal enterprise being investigated still

³We note that the department was closed on February 17, 2003, in observance of President's Day. Therefore, this day did not count towards the ten-business-day period.

exists, in this case the Ku Klux Klan, the investigations of members of this organization continue. . . . [and] are used to develop additional leads on suspected criminal activity.” Finally, you assert that

[c]onsequently, the release of the reports and other documentation in these files could hinder any open criminal investigations reflected in the files as well as the ongoing intelligence gathering process. Disclosure would inform the individuals named in these documents that their activities are under investigation by law enforcement. This would allow these individuals to change their methods of operation to make it more difficult and more dangerous for law enforcement to gather the information necessary to successfully arrest and prosecute these individuals.

Based upon your arguments and our review of the submitted information, we agree that the release of the submitted information would interfere with law enforcement and crime prevention. Thus, the department may withhold the submitted information under section 552.108 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).

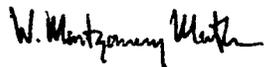
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 180662

Enc: Submitted documents

c: Mr. Lucius Lomax
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(w/o enclosures)