



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2003-5956

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185666.

The Austin Police Department (the "department") received a request for information relating to the late Lt. Gov. Bob Bullock. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted. We also have reviewed the correspondence that we received from the requestor.¹

Initially, we must address the requestor's contention that the submitted information was responsive to a previous request for information that he submitted to the department. The requestor asserts that the department may not now withhold information that was responsive to his previous request.² You acknowledge that the department received a similar request

¹See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

²We note that chapter 552 of the Government Code does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body is not required to take affirmative steps to create or obtain information that is not in the governmental body's possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request. See Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). A governmental body must make a good-faith effort, however, to relate a request to information that is within the governmental body's possession or control. See Open Records Decision Nos. 87 at 3 (1975), 561 at 8-9 (1990).

from this same requestor earlier this year. You have provided this office with a copy of the previous request for information. You represent to this office, however, that the information that the requestor provided in submitting his previous request was not sufficient to enable the department to locate the information that the department now seeks to withhold. You explain that, due to the age of the information at issue, it is stored in microfiche. You state that the department was unable to locate this information in connection with the previous request because the description provided by the requestor did not provide information that corresponded to the microfiche index. You inform us that the requestor provided additional information in connection with the present request and that this additional detail enabled the department to locate the information at issue. You have submitted background information that further explains your representations.³ The question of whether the department should have been able to locate the information at issue in responding to the previous request presents a fact issue. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts represented to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Having considered the requestor's arguments, your representations, and the background information that you have provided, we find that the department made a good-faith effort to locate the submitted information in responding to the previous request. *See* Open Records Decision Nos. 87 at 3 (1975), 561 at 8-9 (1990). We therefore conclude that the department is not now precluded from seeking to withhold the submitted information under section 552.108. Accordingly, we will address the department's claim that this information is excepted from disclosure.

Section 552.108(a)(2) excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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.[.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded case that did not result in a conviction or a deferred adjudication. You state that the submitted information relates to a closed criminal investigation that did not result in a final conviction or a deferred adjudication. Based on your representation, we agree that section 552.108(a)(2) is applicable in this instance.

³*See* Gov't Code § 552.303 (authorizing attorney general to solicit additional information deemed to be required for rendition of decision under Gov't Code § 552.301).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information under section 552.108(c), even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the rest of the submitted information under section 552.108(a)(2). We note that the department has discretion under section 552.108 to release additional information that is not otherwise confidential by law. See Gov’t Code § 552.007; Open Records Decision No. 177 (1977) (law enforcement exception does not prohibit release of information).

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).

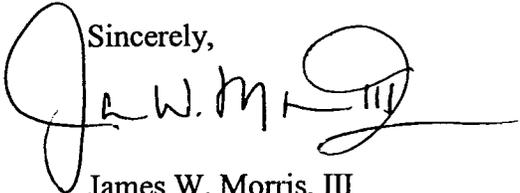
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 185666

Enc: Submitted documents

c: Mr. Lucius Lomax
823 Church Street, Apartment B
Galveston, Texas 77550
(w/o enclosures)