



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 18, 2004

Ms. Johanna H. Kubalak/Ms. Thao La  
Assistant District Attorney  
Dallas County  
133 North Industrial Blvd., LB-19  
Dallas, Texas 75207-4399

OR2004-1195

Dear Ms. Kubalak/Ms. La:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196395.

The Dallas County District Attorney's Office (the "district attorney") and the Southwest Institute of Forensic Sciences (the "institute") each received a request from the same requestor for a variety of information pertaining to the "Fake Drug Scandal." You state that the district attorney and the institute do not possess some of the requested information.<sup>1</sup> You claim that some of the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information, which includes representative sample documents.<sup>2</sup>

---

<sup>1</sup> 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. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. -San Antonio 1978, writ dismissed). 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).

<sup>2</sup> We assume that the representative sample 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). This open

Initially, we note that the institute states, and provides documentation showing, that it sought clarification of the request from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). Based on our review of all of the information that has been submitted to us, it does not appear that the institute had received the requested clarification from the requestor as of the date that it requested a ruling from us. Accordingly, we conclude that the institute need not respond to this request for information regarding any other requested information, other than that submitted to us for our review, until it receives the requestor's clarification. We note, however, that when the institute does receive the clarification, it must seek a ruling from us before withholding from the requestor any information that may be responsive to the request. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification).

We now address the district attorney's and institute's section 552.108 claim regarding the submitted information. Section 552.108(a)(1) of the Government Code exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the submitted information relates to an ongoing criminal investigation being conducted by the district attorney into the "fake-drug scandal." The district attorney further states that this investigation focuses on "possible state criminal charges stemming from the scandal." Finally, the district attorney and the institute indicate that the release of the submitted information would interfere with the district attorney's active criminal investigation by "prematurely broadcasting potentially important evidence."

Based on the arguments presented to us by the district attorney and the institute and our review of the submitted information, we find that section 552.108(a)(1) is applicable to this information and that the release of the information would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision No. 372 at 4 (1983) (law enforcement exception may be invoked by proper custodian of information relating to

---

records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

incident allegedly involving criminal conduct that remains under active investigation or prosecution). Accordingly, we conclude that the district attorney and the institute may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code.<sup>3</sup>

Finally, in response to your request for a previous determination, we note that if the district attorney and the institute were to receive another request for the identical information that has been submitted to us with regard to the present request, this ruling would serve as a previous determination for that request. Thus, this ruling would allow the district attorney and the institute to withhold the submitted information that we find is excepted from disclosure under section 552.108(a)(1) of the Government Code in response to another request for this information, so long as the facts, law, and circumstances on which this ruling is based do not change. *See* Open Records Decision No. 673 (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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

---

<sup>3</sup> Because we base our ruling on section 552.108(a)(1) of the Government Code, we need not address your remaining argument against disclosure of the submitted information.

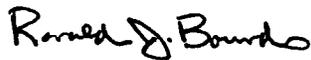
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 196395

Enc. Submitted documents

c: Mr. John W. Monych, III  
Private Investigations  
P.O. Box 190917  
Dallas, Texas 75219  
(w/o enclosures)