



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2004

Sheriff Ben Kirk
Falls County
P.O. Box 401
Marlin, Texas 76661

OR2004-7721

Dear Sheriff Kirk:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208528.

The Falls County Sheriff (the "sheriff") received two requests for information pertaining to a specified incident, including an audio cassette or CD copy of all relevant 911 calls and radio traffic between the agencies involved in the response, and an event log from the incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that part of one of the requests appears to be a standing request for information pertaining to the incident as soon as the criminal investigation is completed. 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, 552.021, 552.227, 552.351.* 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).* Consequently, a governmental body is not required to comply with a standing request to supply information on a periodic basis as such information is prepared in the future. *See Attorney General Opinion JM-48 at 2 (1983); see also Open Records Decision Nos. 465 at 1 (1987), 476 at 1 (1987).*

Next, we note that you did not submit to us either the requested audio cassette or CD copy of all relevant 911 calls and radio traffic between the agencies involved in the response or the event log from the incident. Therefore, we presume that the sheriff has already released this information to the extent that it existed on the date of the receipt of the request for information. If not, then the sheriff must release that information. See Gov't Code §§ 552.006, 552.301, 552.302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You assert that the submitted information is excepted from release under section 552.108 of the Government Code. Section 552.108(a) excepts 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." 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), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to an "open investigation" and the "matter is still pending." Based on this representation, we conclude 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).

We note, however, that information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining 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.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 208528

Enc. Submitted documents

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