



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2007

Mr. Paul Isham
Interim City Attorney
City of New Braunfels
P. O. Box 311747
New Braunfels, Texas 78131-1747

OR2007-00857

Dear Mr. Isham:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 269860.

The New Braunfels Police Department (the "department") received a request for fourteen categories of information pertaining to a named officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim that the requestor, in items 2, 4, 12, 13, and 14, has asked the department to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8-(1990), 555 at 1-2 (1990). However, we note that each of these items 2, 4, 12, 13 and 14, are requests for information. To the extent that you have not submitted the information responsive to items 2, 4, 12, 13, and 14 for our review, we assume you have released it to the extent that it existed at the time this request was received. If you have not released any such records, you must release them to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We note that you have redacted information from the submitted documents that you seek to withhold. The department is not required to submit social security numbers to this office pursuant to section 552.147, and we note that a government body may withhold a peace officer's home address and telephone number, personal cellular phone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001); Gov't Code § 552.147(b). However, you have also redacted information that is not subject to section 552.147 or section 552.117(a)(2). As we are able in this instance to ascertain the nature of the information that you have redacted, we will determine whether it is excepted from public disclosure. In the future, however, the department should refrain from redacting any information, other than the types mentioned above, that it submits to this office in seeking an open records ruling. Failure to comply with section 552.301 will result in the information being presumed public under section 552.302. *See* Gov't Code §§ 552.301(e)(1)(D), .302.

We next note that a portion of the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

Gov't Code § 552.022(a)(2). As prescribed by section 552.022(a)(2), the department must release the marked salary information unless such information is confidential under "other law." Although you claim section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests, and therefore is not other law for purposes of section 552.022(a). *See* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions generally). Therefore, the department may not withhold salary information under section 552.108.

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." 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 id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and

provide a letter from the Comal County District Attorney's Office, that the submitted information relates to case that is pending possible prosecution by the Comal County District Attorney's Office. Based upon this representation, we conclude that the release of the remaining information would interfere with the detection, investigation, or prosecution of crime.¹ 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).

In summary, the department must release the marked salary information pursuant to section 552.022(a)(2). The department may withhold the remaining information pursuant to section 552.108(a)(1).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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

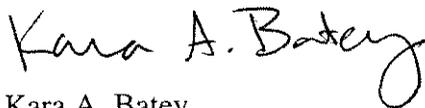
¹As our ruling is dispositive, we need not address your arguments under sections 552.101 and 552.103.

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 Office of the Attorney General 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. 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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/krj

Ref: ID# 269860

Enc. Submitted documents

c: Mr. Craig Greening
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(w/o enclosures)