



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2007

Mr. Humberto Saldana
City Attorney
Chief James W. Bush
City of Somerset
7360 E. 6th Street
Somerset, Texas 78069

OR2007-00937

Dear Mr. Saldana and Chief Bush:

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# 269933.

The City of Somerset (the "city") received two requests from the same requestor for specified documents involving the requestor and information related to active warrants and affidavits executed during a specified time period. You claim that the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, the city attorney states it received approval from the Somerset Municipal Court Judge to submit certain documents related to the request for warrants and affidavits to our office. We must consider whether this information is subject to the Act. Generally, the Act governs the disclosure of information maintained by or for a "governmental body." *See Gov't Code §§ 552.002, .021*. Although the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See Gov't Code § 552.003(1)(B)*; Open Records Decision No. 25 (1974). It appears that the information submitted by the city attorney is a record of the judiciary. To the extent the citations, warrants, affidavits, and complaints submitted by the city attorney are records of the municipal court, these documents

are records of the judiciary and are not subject to the Act. *See* Gov't Code §§ 552.003(1)(A), (B) (definition of "governmental body" under Act specifically excludes the judiciary), .0035 (access to information maintained by or for judiciary governed by rules adopted by supreme court); Tex. R. Jud. Admin. 12 (public access to judicial records). Thus, if the documents submitted by the city attorney are maintained solely by the municipal court, they are not subject to release under the Act and need not be released in response to the present request. However, to the extent copies of the documents submitted by the city attorney are maintained elsewhere by the city, such as by the city's police department, they are subject to the Act and may only be withheld if an exception to disclosure under the Act applies as described below.

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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city attorney and chief of police both state that the submitted information relates to pending investigations. Based upon these representations and our review, we determine that the release of this 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). Thus, the city may withhold the submitted information pursuant to section 552.108(a)(1). We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. 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, 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 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/krl

Ref: ID# 269933

Enc. Submitted documents

c: Mr. Orlando Rivera
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(w/o enclosures)