



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2007

Mr. Loren B. Smith
Olson & Olson L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2007-01612

Dear Mr. Smith:

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# 270858.

The City of Friendswood (the "city"), which you represent, received a request for information related to complaints regarding a dog at large. You state that you have released some of the responsive information. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains records that were created and submitted to the city after the city received the request at issue. The Act does not require a governmental body to disclose information that did not exist at the time the request was received or to prepare new information in response to a request for information. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Thus, these additional documents are not responsive to the current request and we assume that they were submitted for informational purposes. This ruling does not address the public availability of these additional records, and the city is not required to release them in response to this request.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. See Gov't Code § 552.108(a)(2). You

state that the records pertain to an investigation that did not result in conviction or deferred adjudication. Based on your representations, and our review, we find that section 552.108(a)(2) is applicable in this instance.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 185-86 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 127 (1976). In this instance, the responsive records do not contain basic information.¹ Thus, you may withhold the submitted records under section 552.108(a)(2).

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

¹ Because our determination on this issue is dispositive, we need not address your remaining arguments against disclosure.

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 270858

Enc. Submitted documents

c: Ms. Shannon Moran
1503 Piney Woods
Friendswood, Texas 77546
(w/o enclosures)