



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2007

Mr. Alan Bojoquez
Bovey & Bojorquez, L.L.P.
City Attorney
City of Mart
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

OR2007-10452

Dear Mr. Bojorquez:

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# 286571.

The City of Mart (the "city"), which you represent, received a request for a named officer's cellular telephone records from a specified time period. 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 and you acknowledge that because a portion of the submitted information consists of a telephone call that was made outside of the specified time period, such information is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release that information in response to this request.

You assert that some of the remaining information is excepted under section 552.108 of the Government Code, which provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). You argue that the city-issued cellular telephone number belonging to the named police officer is excepted from disclosure under section 552.108(b)(1) because the release of this cellular telephone number would interfere with the named police officer's law enforcement responsibilities. In Open Records Decision No. 506 (1988), we determined that the statutory predecessor to section 552.108(b) excepted from disclosure "the cellular mobile phone numbers assigned to [Harris C]ounty officials and employees with specific law enforcement responsibilities." Open Records Decision No. 506 at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* Therefore, based on your representations and our review, we conclude that you have demonstrated that release of the cellular telephone number at issue would interfere with law enforcement. This phone number, which we have marked, may be withheld under section 552.108(b)(1) of the Government Code.

You also claim that the remaining information is excepted from disclosure under sections 552.108(a)(1) and 552.108(b)(1). A governmental body claiming section 552.108(a)(1) or 552.108(b)(1) 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), 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, in this instance you state only that the release of the requested information could relate to unspecified city police department investigations. We conclude that this representation fails to demonstrate that 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the city may not withhold the remaining information under

section 552.108. As you raise no other exception to disclosure of this information, it must be released to the requestor.

In summary, you may withhold the cellular telephone number that we have marked under section 552.108(b)(1) of the Government Code. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read "Justin D. Gordon". The signature is fluid and cursive, with a large initial "J" and "G".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 286571

Enc. Submitted documents

c: Ms. Julie Holley
1014 East Texas Avenue
Mart, Texas 76664
(w/o enclosures)