



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2007

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2007-11552

Dear Mr. Hager:

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# 289455.

The City of The Colony (the "city"), which you represent, received a series of requests from the same requestor for a property-impound report; "any and all information collected from Race Trac gas station" on a specified date, including a CD or videotape; and other information relating to a criminal investigation. The requests also contain questions. You state that the city is not in possession of the information obtained from Race Trac. You contend that the city need not respond to the requestor's questions. You claim that the submitted property-impound report is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your arguments and have reviewed the submitted information. We note that the information does not appear to include other information to which the requestor seeks access, including the time frame of the CD or video and the name of the Race Trac employee who provided it to the city. Accordingly, the city must release that information, unless it has already done so, to the extent that the information existed when the city received the request. *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Initially, we address the city's obligations with respect to the information obtained from RaceTrac. We note that the Act is applicable to "public information," which consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Quoting from an e-mail from the chief of the city police department (the "department"), you inform us that "Race Trac provided [the department] with a CD of the robbery footage from [RaceTrac's] equipment[.]" You have provided a copy of that e-mail, which also states that the "CD was turned over to the [Denton County] District Attorney's Office as evidence." The e-mail also states that the department "never received a video tape from Race Trac and to the best of [the chief's] knowledge a tape never existed to turn over." It also states that "[t]here is nothing in our possession to turn over to [the requestor.]" You also have provided another e-mail from the department, which you quote as stating that "[a]ll that the [department] had[] was delivered to the [district attorney's] office[.] There is no other evidence being held by the [department] in reference to this case[.]"¹ You do not indicate that the city owns the information that was turned over to the district attorney's office or that the city has access to that information. Based on your representations and the submitted e-mails, we conclude that the city is not required to release the information that was obtained from Race Trac and turned over to the district attorney. *See also* Open Records Decision Nos. 558 at 2 (1990) (information prepared for governmental body not subject to Act if governmental body lacks right of access to or ownership of information), 534 at 2-3 (1989) (governmental body need not take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds information on its behalf).

Next, we address the city's obligations with respect to the requestor's questions. You contend that the city is not required to provide the requestor with answers to her questions. You argue that

[i]n addition to the fact that her questions relate to a pending criminal matter . . . the Act does not require a governmental body to prepare answers to question[s] or do legal research. . . . Further, this case is being addressed by the criminal justice system and the [c]ity believes that any and all answers to questions related to this case should be addressed by said system.

We agree that the Act does not require the city to answer factual questions, conduct legal research, or create responsive information.² However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control.³ Moreover, administrative inconvenience in responding to a request for

¹We note that you have submitted the e-mails from the department in support of your arguments and not as responsive information for which the city seeks a ruling under the Act.

²*See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

³*See* Open Records Decision No. 561 at 8-9 (1990).

information under the Act is not grounds for refusing to comply with the request. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). Thus, the fact that a request for information might be more appropriately directed to a different governmental body does not mean that a request may be dismissed by a governmental body to which it is properly directed. *See* Attorney General Opinion JM-266 at 3 (1984). Therefore, to the extent that the city either maintains or has access to any information that would be responsive to the requestor's questions, any such information must be released.

You seek to withhold the submitted property-impound report under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the property-impound report is related to a pending criminal prosecution. We note that section 552.108 may be invoked by any proper custodian of information relating to an incident involving allegedly criminal conduct that is still under active investigation or prosecution. *See* Open Records Decision No. 372 at 4 (1983) (addressing statutory predecessor). Therefore, based on your representation and our review of the information at issue, we conclude that the city may withhold the property impound report under section 552.108(a)(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: (1) the city is not required to release the information that was obtained from RaceTrac and turned over to the district attorney; (2) the city must release any information that it maintains or to which it has access that would be responsive to the requestor's questions; and (3) the city may withhold the submitted property-impound report under section 552.108(a)(1) of the Government Code.⁴

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

⁴As we are able to make this determination, we need not address your other arguments against disclosure.

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).

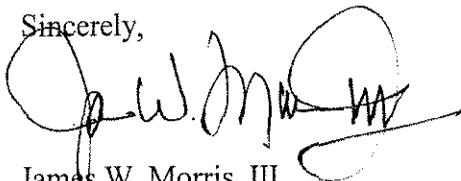
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 'James W. Morris, III', written over a white background.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 289455

Enc: Submitted documents

c: Ms. Melvina L. Sparks
5649 Painter Street
The Colony, Texas 75056
(w/o enclosures)