



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 8, 2007

Mr. Ryan Henry  
Denton, Navarro, Rocha & Bernal  
For the Town of Hollywood Park  
2517 North Main Avenue  
San Antonio, Texas 78260

OR2007-13032

Dear Mr. Henry:

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# 291137.

The Town of Hollywood Park (the "town"), which you represent, received a request for several categories of information pertaining to any "commercial surety claim submitted to any insurance company alleging fraud or theft" in which the requestor's client is a suspect or witness. You argue that the requested information is not subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments stating whether requested information should be released).

You state that the submitted information consists of records of the judiciary. The Act generally requires the disclosure of information maintained by a "governmental body." *See* Gov't Code §§ 552.002, .021. While the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See id.* § 552.003(1)(B); Open Records Decision No. 25 (1974). You inform us that the submitted information consists of records collected, assembled, and maintained by the town's municipal court. Accordingly, we have marked the portion of the submitted information which consists of judicial records, and this information is not required to be released pursuant to the Act. But we note that Texas courts have long

recognized a common-law right to copy and inspect certain judicial records. Attorney General Opinions DM-166 at 2-3 1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); *see Star Telegram, Inc. v. Walker*, 834 S.W.2d 54,57 (Tex. 1992) (documents filed with courts are generally considered public and must be released). Additionally, the records may be subject to disclosure under statutory law. *See Gov't Code* § 27.004 (all papers filed in case in justice court are subject to inspection of any interested party at reasonable times); *Loc. Gov't Code* § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order).

Next, we address the requestor's contention that the town previously released significant portions of the requested information to third parties. We note that section 552.007 of the Government Code prohibits selective disclosure of information. Thus, a governmental body cannot withhold information from a requestor that it has voluntarily made available to another member of the public unless the information is confidential by law. *See Gov't Code* § 552.007(b). As a general rule, if a governmental body releases information to one member of the public, the Act's exceptions to disclosure are waived unless the information is deemed confidential under the Act. Open Records Decision Nos. 490 (1988), 400 (1983). Although protection for information covered by the Act's permissive exceptions, such as sections 552.103 and 552.108 can be waived, protection for information deemed confidential by law ordinarily is not waived through "selective disclosure." *See ORD* Nos. 490, 400.

In this case, if the town previously released any of the remaining submitted information to a member or members of the public, the town cannot now withhold such information under sections 552.103 or 552.108. However, if the town previously released confidential information, such information remains confidential and must not be released to the requestor. To the extent the town has not released the submitted information to the public, we address the town's arguments for withholding the remaining submitted information.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(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 [required public disclosure] if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)-(b). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, sections 552.108(a)(2) and (b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. 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). In this instance, you state that the submitted information pertains to an ongoing criminal investigation. Based upon this representation and our review, we conclude that the release of the remaining submitted 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). Therefore, the town may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

The requestor asserts that the submitted information is subject to section 552.102 of the Government Code and therefore he has a special right of access to the submitted information pursuant to section 552.023 of the Government Code. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov't Code § 552.102(a). We note that section 552.023 provides that a person or a person's authorized representative has a right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. Gov't Code § 552.023. However, in this instance, the submitted information relates official business of the town and does not contain any

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

personnel records of the requestor's client. Furthermore, the requested information may be withheld under section 552.108, which protects law enforcement interests rather than privacy rights. A requestor does not have a right of access under section 552.023 to information that is protected from public disclosure by a law that is not based exclusively on the requestor's privacy interests. *See, e.g.*, Open Records Decision Nos. 603 at 2-3 (1992) (no section 552.023 right of access to information encompassed by Health & Safety Code § 142.009, which protects integrity of investigatory process as well as individual's privacy interests), 587 at 3-4 (1990) (no right of access to information protected by former Fam. Code § 34.08, which protected law enforcement interests). Therefore, the requestor does not have a special right of access to the requested information.

In summary, the town is not required to disclose the information we have marked because it is not subject to the Act. To the extent the town has not released the remaining submitted information to the public, the town may withhold it under section 552.108 of the Government Code.

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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 291137

Enc. Submitted documents

c: Mr. Mark Anthony Sanchez  
Gale, Wilson, & Sanchez  
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(w/o enclosures)