



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2008

Mr. Michael M. Kelly
Assistant Criminal District Attorney
County of Victoria
205 North Bridge Street, Suite 301
Victoria, Texas 77901

OR2008-00798

Dear Mr. Kelly:

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# 299918.

The Victoria County Sheriff's Office (the "sheriff") received two requests from the same requestor for specific information pertaining to calls for service, incident reports, or other records involving the former sheriff. You contend that the initial request for information is in the impermissible format of questions rather than a request for documents, and therefore the sheriff is not required to respond. You further claim the information responsive to the second request is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments.

You assert that the first request asked for answers to questions. We agree that the Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. However, the Act does require a governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). In this instance, we find that the requestor's first request was sufficiently specific to enable the sheriff to identify any responsive information that is within the sheriff's possession or control. *See* Open Records Decision No. 483 at 2 (1987) (stating that the Act requires no particular request form or "magic words").

You then assert that the requestor's second request is "entirely too vague and broad for response[.]" Section 552.222(b) of the Government Code provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. This office previously has held that a request "must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request." Open Records Decision Nos. 663 at 4 (1999), 23 at 1-2 (1974); *see also* Open Records Decision No. 304 (1982). Section 552.222(b) also provides that "[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed[.]" The purpose of section 552.222 is to authorize a dialogue between the governmental body and the requestor regarding the scope of the records request.¹ ORD 663. Section 552.222(b) does not stand for the proposition that a request may be denied merely because it seeks a broad range of documents. If a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available that may be responsive so that the requestor may narrow or clarify the request. *See id.* at 5. If the requestor chooses not to narrow a broad request, the governmental body must release all responsive information if not claiming an exception to disclosure applies, or request a ruling under section 552.301 of the Government Code for any information it seeks to withhold. The administrative inconvenience of providing public records is not a ground for refusal to comply with the Act. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976).

Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1), (2). You inform us that the sheriff received the initial request on October 26, 2007. Thus, the fifteen business-day deadline to comply with section 552.301(e) was November 16, 2007. As of this date, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we find that the sheriff failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See* Gov't Code § 552.302;

¹ Section 552.222(b) also limits the nature of the inquiries by the governmental body to those regarding the requested documents themselves. This section prohibits the governmental body from inquiring into the purpose for which the requestor seeks the records.

Hancock v. State Bd. of Ins., 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). But see Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). In failing to comply with section 552.301, the sheriff has waived its claim under section 552.108. Furthermore, because you have failed to submit any responsive information for our review, we have no basis for finding that a compelling reason exists. Thus, to the extent responsive information existed when the sheriff received the request, we have no choice but to order you to release the responsive information in accordance with section 552.302 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/mcf

Ref: ID# 299918

No Enclosures

cc: Mr. Gabe Semenza
Victoria Advocate
311 East Constitution Street
Victoria, Texas 77901
(w/o enclosures)