



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 19, 2008

Ms. Jacqueline Cullom Murphy  
Assistant District Attorney  
Bexar County  
Cadena-Reeves Justice Center  
300 Dolorosa, 5<sup>th</sup> Floor  
San Antonio, Texas 78205-3030

OR2008-06788

Dear Ms. Murphy:

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# 310874.

The Bexar County Criminal District Attorney's Office (the "district attorney") received a request for information pertaining the arrests and criminal charges of three named individuals. The requestor also seeks complaints made against the district attorney. You state that you have released a portion of the requested information. You also state that you do not have information responsive to a portion of the request.<sup>1</sup> 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 representative sample of information.<sup>2</sup> We have also received and considered comments

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the city. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.— San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

submitted by the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Initially, the requestor contends that the district attorney did not meet its procedural obligations. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301 states in pertinent part:

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

...

(d) A governmental body that requests an attorney general decision must provide to the requestor, not later than the 10th business day after the date of its receipt of the written request for information:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for an attorney general decision about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

*Id.* § 552.301(b), (d). The district attorney asserts that it received the request for information on March 4, 2008. Thus, the district attorney was required to submit a request for a ruling to our office and mail a copy of the request for a ruling to the requestor no later than March 18, 2008. The district attorney's request for a ruling to this office, which was copied to the requestor, was postmarked on March 18, 2008. Section 552.308 of the Government Code states a document is timely if it is sent via first class United States mail and bears a post office cancellation mark. Therefore, we determine that the requestor has not established that the district attorney violated the procedural requirements of section 552.301.

Next, we address the district attorney's assertion that a portion of the request for information is overly broad. You state that the request for copies of complaints filed against the district attorney is too vague. You further state that you will ask the requestor to clarify this portion of the request and provide additional information to assist in the search for responsive documents. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request

may be properly narrowed). You do not indicate that the district attorney has received a response to its request for clarification. To the extent the district attorney has not received a response, we find that the district attorney's office has no obligation at this time to release any information that may be responsive to the portion of the request for which it has sought clarification. However, in the event the district attorney receives a response to its request for clarification and wishes to withhold any additional information to which the requestor seeks access, you must request another decision from this office. See Gov't Code §§ 552.301, 552.302.

Next, you claim section 552.108(a)(1) for the submitted information. Section 552.108 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[.]" *Id.* § 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 submitted information relates to ongoing criminal prosecutions. Based on your representation and our review, we conclude that section 552.108(a)(1) is generally applicable in this instance. 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). We note, however, that the submitted information includes citations. Because copies of the citations have been provided to the individuals who were cited, we find your representation insufficient to demonstrate that release of these citations will interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Thus, the district attorney may not withhold the citations, which we have marked, in the submitted information under section 552.108(a)(1).

We also note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d 177; Open Records Decision No. 127 (1976) (listing basic information that must be released from offense report in accordance with *Houston Chronicle*). Thus, with the exception of the basic offense and arrest information and the submitted citations, the district attorney may withhold the submitted information from disclosure based on section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

Finally, we note that the submitted citations contain information that is subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." *Id.* § 552.130. The submitted citations include Texas motor vehicle record information. Accordingly, the district attorney must withhold the driver's license numbers we have marked in the submitted citations under section 552.130 of the Government Code.

In summary, with the exception of basic information and the submitted citations, the district attorney may withhold the submitted information under section 552.108(a)(1) of the Government Code. The district attorney must withhold the driver's license numbers we have marked in the submitted citations under section 552.130 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 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).

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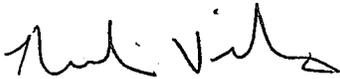
<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jh

Ref: ID# 310874

Enc. Submitted documents

c: Mr. Jack H. Taylor, Jr.  
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(w/o enclosures)