



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2008

Ms. Debra G. Rosenberg
Atlas & Hall, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725

OR2008-09593

Dear Ms. Rosenberg:

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# 316033.

Hidalgo County (the "county"), which you represent, received a request for cell phone records showing all calls made or received by a named individual's county cell phone from March 1, 2008 to March 28, 2008. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that portions of the submitted information, which we have marked, are not responsive to the instant request because the information falls outside the time period specified by the requestor. The requestor seeks call records showing calls made or received from March 1, 2008 to March 28, 2008. Accordingly, information showing calls made or received prior to March 1, 2008 is not responsive. The county need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note that you have only submitted information showing calls made or received through March 26, 2008. Thus, you have not submitted any information responsive to the portion of the request for calls made or received on March 27, 2008 and March 28, 2008. Further, you have not indicated that you have released or will release this information or that you wish to withhold this information from disclosure. Therefore, to the extent information responsive to this part of the request existed on the date the county received the request, we assume the county has released it to the requestor. If the county has not released any such information, the county must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302.

We now turn to your arguments for the submitted responsive information. Section 552.108(a)(1) of the Government Code exempts 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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why 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).

Although the county is not a law enforcement agency, section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 at 4-5 (1987); 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to incident). Where a governmental body possesses information relating to a pending case of a law enforcement agency or prosecutor, the governmental body may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity or prosecutor that the law enforcement entity or prosecutor wishes to withhold the information.

You inform us that the responsive information is potential evidence in an ongoing criminal investigation. You state that the Hidalgo County District Attorney’s Office (the “district attorney”) has asked the county’s Public Information Officer not to release the responsive call records because the district attorney believes that doing so would interfere with the ongoing investigation. Based on these representations, we agree that release of the responsive 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). Accordingly, the county may withhold the responsive information under section 552.108(a)(1) of the Government Code.¹

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

¹As our ruling is dispositive, we do not address your remaining argument against disclosure.

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). If the governmental body does not file suit over 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).

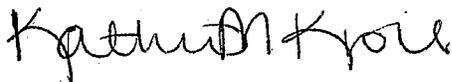
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 316033

Enc. Submitted documents

c: Ms. Aida Garza
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(w/o enclosures)