



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 22, 2011

Mr. James D. Parker  
Knight & Partners  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2011-02587

Dear Mr. Parker:

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# 409629.

The Bertram Police Department (the "department"), the Bertram Municipal Court (the "court"), and the Bertram Municipal Court Clerk (the "clerk"), which you represent, received a request for the following four categories of information: (1) radar unit repair records, manufacturer's operation manual, calibration log, and FCC license to operate; (2) tuning fork accuracy certification, repair records, and calibration records; (3) arrest records for a named department officer for the day of a specified citation and the three months prior, as well as the daily log for the day of the citation, radar tuning record, operators certificate, and the citation; and (4) patrol car speedometer calibration certificate, repair records, and maintenance records for a specified patrol car. You state the department will release the requested citation to the requestor. You also state the department does not have some records responsive to the request.<sup>1</sup> You claim the submitted 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 representative sample of information.<sup>2</sup>

Initially, we note the Act is applicable to information maintained by a "governmental body." See Govt Code § 552.021. We agree the Act's definition of "governmental body" "does not

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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 or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We assume 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.

include the judiciary.” *Id.* § 552.003(1)(B). Consequently, information “collected, assembled, or maintained by or for the judiciary” is not subject to the Act. *Id.* § 552.0035(a). As noted above, the request for information was specifically addressed to the department, the court, and the clerk. Accordingly, to the extent responsive information is maintained only by the court, or by the clerk as an agent for the court, such information is not subject to the Act and need not be released in response to this request for information. Based on your statements to this office, we understand the submitted information is maintained by the department. Therefore, this information is subject to the Act, and we will consider your raised arguments against its disclosure.

Next, we note you have only submitted the named officer’s daily log for the date of the citation, the named officer’s arrest record for the three months prior to the citation, and two vouchers indicating payment for radar certifications. To the extent information responsive to all other parts of the request existed on the date the department received the request, we assume they have been released. If not, you must release them at this time. *See* Gov’t Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Some of the submitted information is subject to section 552.022(a)(3) of the Government Code. Section 552.022(a)(3) provides for the required public disclosure of “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body.” Gov’t Code § 552.022(a)(3). Two of the submitted documents consist of vouchers related to the expenditure of public funds by the department, and therefore are subject to section 552.022(a)(3). Although you assert this information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions within the Act and not “other law” that makes information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n. 5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the vouchers we marked may not be withheld under either section 552.103 or section 552.108. As you raise no other exceptions to their disclosure, the submitted vouchers must be released.

We next turn to the information not subject to section 552.022. 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.” *Id.* § 552.108(a)(1). 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). You state the remaining daily log and arrest record is related to the department’s ongoing investigation of a citation issued to the requestor, and that release of this information would interfere with that investigation. Based on this representation and our

review, we agree release of the remaining 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold the information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, any responsive information that is maintained only by the court or by the clerk as an agent for the court is not subject to the Act and need not be released. The submitted vouchers must be released pursuant to section 552.022(a)(3) of the Government Code. The department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tf

Ref: ID# 409629

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.