



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2012

Mr. Amos L. Barton
District Attorney
198th Judicial District
P.O. Box 291285
Kerrville, Texas 78029

OR2012-06719

Dear Mr. Barton:

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# 452628.

The 198th Judicial District Attorney's Office (the "district attorney's office") received a request for all documents that reflect the district attorney's office's expenses over a specified time; the district attorney's office's employee handbook; and information related to a named assistant district attorney, including his employment agreement, accrued vacation time, signed oath of office, all e-mails he sent or received, and all cell phone records of calls completed with a district-provided cell phone. You state you have released some of the requested information. You claim portions of the requested information are 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the date the request was received. This ruling does not address the public availability of non-responsive information, and the district attorney's office is not required to release non-responsive information in response to this request.

Next, we must address the requestor's assertion the district attorney's office did not comply with section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). The district attorney's office received the initial request on February 2, 2012. However, the district attorney's office states, and provides documentation showing, it requested clarification of the request on February 15, 2012. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). In *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010), the Texas Supreme Court held that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed. *See id.* at 384. You state, and the submitted documents show, the requestor responded to the request for clarification on February 21, 2012. We have no indication the district attorney's office did not act in good faith in seeking clarification of the request. Therefore, based on the submitted documentation, we consider the district attorney's office's ten-day-deadline for requesting a decision under section 552.301 to have begun on February 21, 2012, the date the district attorney's office received the requestor's clarification. Accordingly, the district attorney's office's ten-business day deadline was March 6, 2012. Thus, as we received the district attorney's office's request for a decision on March 2, 2012, we find the district attorney's office fully complied with the requirements of section 552.301(b) of the Government Code in requesting this decision.

The requestor complains the submitted information does not consist of a representative sample. On March 1, 2012, the district attorney's office submitted arguments along with what it described as a "representative sample" for a portion of the requested information. We note in requesting a ruling, a governmental body may submit to this office a representative sample of information rather than submitting all the requested records. Gov't Code § 552.301(e)(1) (D). In doing so, it is the governmental body's burden to assure that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* ORDs 499, 497. Whether the district attorney's office has additional information that it has not provided is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Accordingly, we must accept the district attorney's office's representation the records submitted to this office are truly representative of the requested records as a whole. *See* ORDs 499, 497. This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *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 responsive information relates to pending cases that have been presented to a grand jury. Based upon your representation, we conclude release of the responsive information will 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). Accordingly, we find the district attorney’s office may withhold the responsive 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, 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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/em

Ref: ID# 452628

Enc. Submitted documents

c: Requestor
(w/o enclosures)