



JOHN CORNYN

May 8, 2001

Mr. Francisco J. Martinez
Assistant District Attorney
Cameron County
974 E. Harrison Street
Brownsville, Texas 78520

OR2001-1872

Dear Mr. Martinez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146927.

The Cameron County District Attorney's Office (the "DA") received a request for the 911 audio tape of the call that reported a specified mobile home fire, and tapes of communications among dispatchers and emergency personnel that relate to that reported fire. You note that the Brownsville Police Department received an identical request. The Brownsville Police Department did not submit a request for decision to this office regarding the request for information that it received. This opinion letter, therefore, does not address the request made to the Brownsville Police Department, but rather is limited to the obligations imposed on the DA by the Public Information Act (the "Act") in regard to the request for information that the DA received.

You have submitted the requested 911 tape to this office for review. You have not submitted the requested taped communications of emergency personnel. You claim that the responsive information is excepted from public disclosure by sections 552.103 and 552.108 of the Act.

You contend that the DA has no obligation to produce the taped communications of the emergency personnel. Subject to exceptions to disclosure, a governmental body is required to release information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by the governmental body or for the governmental body and the governmental body owns the information or has a right of access to it. Gov't Code §§ 552.022(a), 552.006, 552.021; Open Records Decision 558 (1990). You assert that the DA "does not have custody, possession or control" of the taped communications among emergency personnel. However, you also assert that "selected information, but not all may be retrieved in order to prosecute the criminal case." From your assertions it is clear that the DA has access to the requested taped communications. This information is therefore subject to public disclosure under the Act.

The Act requires a governmental body that wishes to withhold requested information to provide to this office a copy of the specific information requested, or a representative sample thereof, within fifteen business days of its receipt of the request for information. Gov't Code § 552.301(e)(1)(D). If the governmental body does not comply with this requirement, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. Permissive exceptions, including sections 552.103 and 552.108 of the Government Code, do not make information confidential. Open Records Decision No. 522 (1989). We conclude that since you have not provided the requested taped communications to this office for review, all such taped communications that the DA possesses or has a right of access to are made public by section 552.302 of the Government Code and must be released.

You argue that the submitted 911 tape is excepted from public disclosure by section 552.108 of the Government Code. Section 552.108(a)(1) excepts from required public disclosure information 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." This exception applies to certain information that relates to pending investigations or prosecutions. *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); Open Records Decision No. 216 (1978). You inform us that the requested 911 tape pertains to a pending criminal case. The DA may therefore withhold the submitted 911 tape under section 552.108 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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 General Services Commission 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/sdk

Ref: ID# 146927

Encl: Submitted documents

cc: Mr. J. Noel Espinoza, Staff Writer
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(w/o enclosures)