OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 16, 2001

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-4665

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153458.

The Texas Department of Criminal Justice (the "department") received a request for information regarding the investigation conducted as a result of the requestor's complaint of retaliation. You claim that some of the requested information is excepted from disclosure under sections 552.107 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information.

Initially, you contend that the requested information does not exist because the investigation at issue is not yet complete. The Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). We note, however, that the department has a good faith duty to relate a request to information held by it. Open Records Decision No. 561 at 8 (1990). You submitted to us information regarding the investigation of the requestor's complaint of retaliation, which we believe is information the department holds that relates to the requested investigation. We will therefore consider whether the submitted information is subject to required public disclosure under the Act.

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[1] Although the department initially raised section 552.103 as an exception to the disclosure of the requested information, in its August 24, 2001 correspondence to this office, the department states that it is not asserting that exception. The department therefore withdrew its section 552.103 claim. Further, as the department failed to provide arguments in support of its initial claims under sections 552.101, 552.108, and 552.117, we assume that the department is no longer asserting those exceptions.

You contend that the information in Exhibit 1 is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) of the Government Code excepts information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]" While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office has determined that section 552.107 cannot be applied as broadly as written to information in the possession of an attorney for a governmental body. Open Records Decision No. 574 (1990). Section 552.107(1) was found to protect only the attorney's communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. Moreover, section 552.107(1) does not except purely factual information from disclosure. *Id.* We determine the applicability of section 552.107(1) on a case-by-case basis. We agree that some of the information in Exhibit 1 reflects an attorney's legal advice or opinions. The department may therefore withhold the information we have marked in Exhibit 1 under section 552.107.

We note that one of the documents in Exhibit 2 is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

> (a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*
>
> . . .
>
> (8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures[.]

Gov't Code § 552.022(a)(8) (emphasis added). Therefore, as prescribed by section 552.022, the document we have marked in Exhibit 2 must be released to the requestor unless it is made confidential under other law. As you raise no exception to disclosure of this document, it must be released.

Some of the information in Exhibit 2 must be withheld under section 552.117 of the Government Code. Section 552.117(3) of the Government Code excepts from public disclosure, among other things, the social security number of department employees. Therefore, the department must withhold the social security numbers that we have marked in Exhibit 2 pursuant to section 552.117(3).

We note, however, that information protected under sections 552.117(3) is intended to protect a person's privacy. Therefore, under section 552.023 of the Government Code, a person who is the subject of the information or the person's authorized representative has a special right of access to such information. Accordingly, section 552.023 provides the requestor a special right of access to her social security number and home address, which is included among the information in Exhibit 2.

To summarize: (1) we have marked the information in Exhibit 1 that may be withheld under section 552.107; and (2) we have marked the information in Exhibit 2 that must be withheld under section 552.117(3). As you raise no other exception to disclosure, 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 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 Dept. 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,

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 153458

Enc: Submitted documents

c: Ms. LaKerrie Owens
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(w/o enclosures)