



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 24, 2003

Mr. Jeffrey L. Moore  
Brown & Hofmeister, L.L.P.  
1717 Main Street, Suite 4300  
Dallas, Texas 75201

OR2003-7648

Dear Mr. Moore:

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# 189904.

The Town of Flower Mound (the "Town"), which you represent, received a request for sixteen categories of information. You inform us that the Town does not possess information responsive to categories nine, ten, and eleven of the request.<sup>1</sup> You contend that the Town has no obligation to respond to some of the requested items because the Act imposes no obligations on the Town to answer questions. We agree that the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in response to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989); *see also AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681(Tex. App.—Eastland, pet. denied). However, we note that the Act requires a governmental body to make a good faith effort to relate a request for information to the information the governmental body holds. Open Records Decision No. 561 at 8 (1990). Further, you assert the submitted information is excepted from disclosure under

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<sup>1</sup> The Act does not require a governmental body to disclose information that does not exist at the time a request is received or to create new information in response to a request. *See 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).

sections 552.103 and 552.108 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code. This provision provides, in pertinent part, as follows:

(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:

(3) 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). The submitted documents include information relating to the expenditure of public or other funds by a governmental body that is subject to section 552.022(a)(3). The Town must release such information unless it is confidential under other law. *See* Gov't Code § 552.022(a)(3). The Town claims sections 552.103 and 552.108, discretionary exceptions under the Act, which do not constitute other law for the purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 663 (1999) (governmental body may waive Gov't Code § 552.103), 586 (1991) (governmental body may waive Gov't Code § 552.108), 473 (1987); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the Town may not withhold the submitted information subject to subsection 552.022(a)(3), which we have marked, under section 552.103 or 552.108 of the Government Code.

Next, we address your claim under section 552.108 for the submitted information that is not subject to section 552.022. Subsection 552.108(a)(1) states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "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 that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986) (law enforcement agency must explain how release of particular records or parts thereof will interfere with law enforcement or prosecution). You inform us that the information at issue pertains to a prosecution that is pending in the Town of Flower Mound Municipal Court No. 1. Based on our review of your representations and the information at issue, we believe you have established that release of the information "would interfere with the detection, investigation, or prosecution of crime." *See* Gov't Code

§ 552.108(a)(1); *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). Therefore, the Town may withhold the submitted information that is not subject to subsection 552.022(a)(3) under subsection 552.108(a)(1) of the Government Code. As we make this determination, we need not address your claims under section 552.103.

In summary, the Town must release the information we have marked in accordance with subsection 552.022(a)(3). The Town may withhold the remainder of the submitted information under subsection 552.108(a)(1) 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 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink that reads "Christen Sorrell". The signature is written in a cursive, flowing style.

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 189904

Enc: Submitted documents

c: Ms. Karen Schoeve  
4804 Aurora Court  
Flower Mound, Texas 75028  
(w/o enclosures)