



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 25, 2003

Mr. Mike McEntire  
Attorney at Law  
5613 Glenview Drive  
Fort Worth, Texas 76117-2133

OR2003-8557

Dear Mr. McEntire:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191585.

The City of Roanoke (the "city"), which you represent, received two requests for information from the same requestor, concerning the Roanoke Police Department's contacts with the requestor's son, complaints made against the requestor's son, and an investigation of a specified family violence incident. You indicate that the city released responsive information to the requestor upon receiving the first request. Subsequently, the city received another communication from the requestor, seeking additional information relating to activity by the Roanoke police at the son's address, complaints made against the son, the family violence incident, and the corresponding police investigation. In particular, the present request seeks notes taken by police officers on several specified occasions; an e-mail sent to an agency in another state, with the agency's response; photographs taken of the victim of the family violence incident; information relating to an agreement between the Roanoke Police Department and the son's landlord, as well as background check information concerning the requestor's son; information relating to case number 03-00691; and information concerning incidents occurring on August 13 and August 16, 2003. You claim that the requested information is excepted from disclosure under sections 552.102, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that several items of the present request contain inquiries relating to the authority of a magistrate involved in the investigation at issue, the conduct of the investigation, and the charges brought against the requestor's son. In responding to a request for information under chapter 552 of the Government Code, a governmental body is not required to answer factual questions, conduct legal research, or disclose information that did not exist at the time the request was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body is not required to obtain information that is not in its possession, provided no other individual or entity holds that information on behalf of the governmental body that receives the request. *See Gov't Code § 552.002(a)*; Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See Open Records Decision No. 561 at 8-9 (1990)*. In this case, we presume that the city has made a good-faith effort to locate any information that would be responsive to the requestor's inquiries about the magistrate and charges at issue.

We now turn to the city's claimed exceptions to disclosure. You contend that photographs of the victim contained in the submitted documents are excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). Because the submitted photographs are not "information in a personnel file," we find that the photographs are not excepted under section 552.102. However, we will address your privacy claim for the photographs in the context of the doctrine of common-law privacy as encompassed by section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Common-law privacy, as encompassed by section 552.101, protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We agree that the submitted photographs are protected by common-law privacy and must be withheld pursuant to section 552.101 of the Government Code.

Next, section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation,

or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, 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* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the remaining submitted information relates to a pending criminal investigation. Based on your representations and our review, we determine that the release of the remainder of the submitted 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), *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).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the types of information that are considered to be front page offense report information must be released, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes the city to withhold the remaining information from disclosure, the city may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 191585

Enc: Submitted documents

c: Mr. Gary R. Eitel  
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(w/o enclosures)