



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2004

Ms. Paige H. Sáenz
Barney Knight & Associates
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2004-0826

Dear Ms. Sáenz:

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# 195737.

The City of Burnet (the "city"), which you represent, received a request for various information relating to the operation of a certain traffic radar or laser. You indicate that the city does not have some of the specific information cited in the request.¹ However, you claim that the information that does exist is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim reviewed the submitted representative sample of information.²

We note at the outset that some of the sample documents are subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides that, except as provided by section 552.108, a completed report or investigation made of, for, or by a governmental body is not excepted from required disclosure under the act unless the report or investigation is expressly confidential under other law. Section 552.022(a)(3) similarly requires the release of information in an account, voucher, or contract relating to the receipt or expenditure of

¹The act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

public or other funds by a governmental body unless the information is expressly confidential under other law. The daily activity reports and monthly vehicle reports that you submitted to this office constitute completed reports for purposes of section 552.022(a)(1). Further, the purchase and repair orders that you submitted to this office are subject to section 552.022(a)(3). Sections 552.103 and 552.108 are discretionary exceptions to disclosure designed to protect the governmental body's interests; they are therefore not other law that makes information expressly confidential for purposes of section 552.022(a). See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (section 552.103 may be waived); Open Records Decision Nos. 663 (1999) (section 552.103 may be waived), 586 (section 552.108 may be waived), 522 at 4 (1989) (discretionary exceptions in general). Consequently, the city must release the purchase and repair orders we have marked pursuant to section 552.022(a)(3).

We must now consider whether section 552.108 permits the city to withhold the completed reports that are subject to section 552.022(a)(1), as well as the remaining sample information. Section 552.108(a)(1) of the Government Code excepts from 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. 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 state that the requested information relates to a pending criminal case. Based on your representations and our review, we determine that the release of the information at issue would interfere with the 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). Accordingly, the city may withhold the remaining information pursuant to section 552.108(a)(1).³

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days.

³Because we are able to make this determination, we need not reach your argument under section 552.103 of the Government Code.

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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 195737

Enc. Submitted documents

c: Mr. Daniel Williams
715 North Rhomberg Street
Burnet, Texas 78611
(w/o enclosures)