

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 18, 2004

Ms. Kaye Holland Edwards  
Assistant City Attorney  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

OR2004-2073

Dear Ms. Edwards:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197790.

The Rio Concho Multi-Agency Task Force (the "task force") received a request for copies of "(1) racial profiling documentation, (2) documentation of complaints against [t]ask [f]orce officers and staff, and (3) documentation of investigation of said complaints." You state that the task force has no information responsive to items two and three of the request.<sup>1</sup> You claim that the remaining requested information is excepted from disclosure under sections 552.103, 552.108, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you state that "the requestor should have directed its request to the individual bodies comprising the Task Force." Previously, we have determined that the governmental body

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<sup>1</sup> The Public Information 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 dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup> We 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.

by or for which information is “collected, assembled, or maintained” retains ultimate responsibility for disclosing or withholding information in response to a request under the Public Information Act (the “Act”). *See* Open Records Decision No. 576 (1990). You state that the task force “investigates and enforces laws through individual peace officers who have been assigned to the [t]ask [f]orce.” You also comment that the “requested information . . . has been created by peace officers assigned to the [t]ask [f]orce as drug interdiction officers, and the information is held as part of the evidence in the many cases to which they pertain.” After reviewing your arguments and the submitted information, we conclude that the submitted information has been collected, assembled and maintained by task force members. Consequently, the task force retains the ultimate responsibility for disclosing or withholding the information.

You also state that “it would be unduly burdensome and require extensive research to review all the videotapes and log sheets and match each citation or name to a cause number and then determine the status of each one.” This office has stated on numerous occasions that the Act does not require governmental bodies to answer factual questions or perform legal research. *See, e.g.,* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). A governmental body must only make a good faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990). However, the fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (1976), *cert. denied*, 430 U.S. 931 (1977) (cost or difficulty in complying with predecessor of Act does not determine availability of information); Open Records Decision No. 497 (1988). As you have submitted responsive information, we now turn to your claimed exceptions for this information.

You contend that the requested information is excepted from disclosure under section 552.103. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The task force has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The task force must meet both prongs of this test for information to be excepted under section 552.103(a).

The purpose of section 552.103 is to protect the litigation interest of the governmental body claiming the exception. Open Records Decision No. 638 at 2 (1996). Thus, section 552.103 applies only where the litigation involves or is expected to involve the governmental body which is claiming the exception. Open Records Decision No. 392 (1983). You have not shown that the task force is a party to pending or reasonably anticipated litigation. Consequently, the task force has not established the applicability of section 552.103 to the requested information.

Additionally, you argue that the requested information is excepted from disclosure under section 552.108. Section 552.108 of the Government Code provides in pertinent part:

(a) 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:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;
- (2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) 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), .301(e)(1)(A); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). On the other hand, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

In this instance, although you inform this office that “[s]ection 552.108(a)(1) and (2) would protect some, if not a considerable portion, of the cases referenced on the log sheets and videotapes,” you have not specified which of the requested documents pertains to an ongoing criminal investigation or prosecution. Additionally, you seek to withhold the names of task force officers, their duty shifts and locations, and law enforcement tactics. However, you have failed to adequately explain how the release of this information would interfere in some way with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Thus, you have not met your burden under section 552.108(a)(1). Furthermore, you have failed to demonstrate that any of the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). Thus, you have not met your burden under section 552.108(a)(2). Therefore, section 552.108 is not applicable to the submitted information.

Finally, you contend that section 552.119 applies to the requested information. Section 552.119 excepts from public disclosure a photograph of a peace officer, that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. However, you have not demonstrated, nor is it apparent from our review of the submitted information, that release of the videotapes would endanger the life or physical safety of the officers depicted. We therefore determine that the task force may not withhold the videotapes pursuant to section 552.119 of the Government Code.

We note that some of the submitted information is confidential under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold the Texas driver’s licenses and license plate numbers from the documents and videotapes under section 552.130. We note, however, that the out-of-state driver’s licenses and license plate numbers in the submitted information are not excepted from disclosure under section 552.130.

In conclusion, the task force has not shown the applicability of section 552.103, 552.108 or 552.119 to the requested information. Thus, with the exception of the Texas driver's licenses and license plate numbers, the task force must release the requested information to the requestor.

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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/seg

Ref: ID# 197790

Enc. Submitted documents

c: Ms. Lauri Apple  
ACLU of Texas  
P.O. Box 3629  
Austin, Texas 78764  
(w/o enclosures)

CAUSE NO. GV400522

CITY OF SAN ANGELO, Plaintiff,	§	IN THE DISTRICT COURT OF
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, Defendant.	§	201 <sup>ST</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff, City of San Angelo (City), and Defendant, Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Lauri Apple, was sent reasonable notice of this setting and of the parties' agreement that the City may withhold some of the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

**FILED**

05 AUG 10 AM 8:55

*Wanda R. Rodriguez*

DISTRICT CLERK  
TRAVIS COUNTY, TEXAS

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically, the videotapes of Rio Concho Multi-Agency Task Force officers conducting traffic stops and law enforcement activity, as well as those officers' names and other identifying information in the Rio Concho Multi-Agency Task Force activity logs, as marked by the Office of the Attorney General, is excepted from disclosure by Tex. Gov't Code §§ 552.108(b)(1) and 552.119.

2. The City may redact the officers' names and other identifying information in the Rio Concho Multi-Agency Task Force activity logs, and withhold in their entirety the videotapes of Rio Concho Multi-Agency Task Force officers conducting traffic stops and law enforcement activities, enumerated in ¶ 1 of this Judgment.

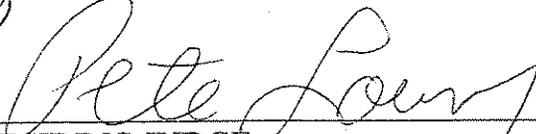
3. If it has not already done so, the City shall release to the requestor the activity logs, with the information described in ¶¶ 1 and 2 of this Agreement redacted, along with any other information that the Attorney General held excepted from disclosure in OR2004-2073 to the requestor promptly upon receipt by the City of an agreed final judgment signed by the Court.

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 10 day of August, 2005.

  
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PRESIDING JUDGE

APPROVED:

  
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