



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2004

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney
Civil Section
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2004-3602

Dear Ms. Dye:

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# 200846.

The Bexar County Sheriff's Office (the "sheriff") received a request for five categories of information pertaining to warrant entries into the National Crime Information Center ("NCIC") and the Texas Crime Information Center ("TCIC") systems. You state that information responsive to category 4 of the request will be provided to the requestor. You state that the sheriff has no information that is responsive to categories 3 and 5 or to a portion of category 2 of the request.¹ You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted by the requestor. *See Gov't*

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 in response to a request. *See Econ. 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.

Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We begin by noting that some of the submitted documents are not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff need not release that information in response to this request. *See Bustamante*, 562 S.W.2d 266; Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

We next address a procedural matter. The requestor asserts that the sheriff was not timely in requesting this ruling. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply "not later than the 10th business day after the date of receiving the written request." *See Gov't Code § 552.301(a), (b)*. You state that the sheriff received the present request for information on February 17, 2004. The 10th business day following that date was March 2, 2004. The sheriff submitted the instant request for a ruling on March 2, 2004. Accordingly, we conclude that the sheriff was timely in requesting this ruling.

Section 552.108 of the Government Code provides in pertinent part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(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); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). This office has concluded that section 552.108 protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment).

You explain that the responsive information is “maintained by the [sheriff] for the purpose of managing and monitoring the NCIC / TCIC databases that are administered by [the sheriff].” You assert that “release of this type of information could reveal methods used to make entries into the system that could potentially breach the security of the NCIC / TCIC system [by enabling persons who] seek to disrupt ongoing public safety operations and emergency and homeland security operations [to] use this information to manipulate the public safety intelligence systems . . . and/or potentially harm the NCIC / TCIC system.” Thus, you contend that release of the information at issue would interfere with law enforcement activities. Based on your arguments and the information you provided, we agree that release of the information at issue would interfere with law enforcement. We therefore conclude that the information at issue is excepted from disclosure under section 552.108(b)(1) of the Government Code, and it may be withheld. As we are able to make this determination, we need not address your remaining argument.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 200846
Enc. Submitted documents

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(w/o enclosures)