



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2004

Ms. Jennifer Barnett
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2004-6034

Dear Ms. Barnett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205534.

The City of Richardson (the "city"), which you represent, received a request for information regarding a charge of failure to maintain a building. Initially, we note that the city only submitted a one-page document for our review. We, therefore, presume that the city has provided the requestor with all other requested information to the extent that it existed on the date that the city received this request. If not, then the city must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted request is addressed to both the municipal court and the city's attorneys. Thus if the document at issue is solely a record of the municipal court, the document is a record of the judiciary and is not subject to release under the Public Information Act (the "Act").¹ *See* Gov't Code §§ 552.003(1)(A)(B) (definition of

¹Records of the judiciary may be public pursuant to other sources of law. Attorney General Opinions DM-166 at 2-3 1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); *see Star Telegram, Inc v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released).

“governmental body” under Act specifically excludes the judiciary), .021 (Act generally requires disclosure of information maintained by “governmental body”). We note, however, that release of the document is within the discretion of the municipal court. *See* Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)). If, however, the record is also maintained by the city, it is subject to the Act. Accordingly, we will address your claimed exceptions to disclosure with respect to information maintained by the city.

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 city 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 city must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that the responsive document relates to a “case investigation that the Richardson Code of Ordinances Enforcement Department has already filed with the Richardson Municipal Court” and that its release would place “undo (sic) hardship on the Police Department and individuals prosecuting the case.” After reviewing your arguments and the submitted document, we conclude that the requested document relates to pending litigation.

We note, however, that when the opposing party in litigation has seen or had access to the information at issue, there is no justification for withholding that information from the requestor pursuant to 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). The

responsive document that you submitted is a copy of a Notice of Warrant for Arrest that was sent by the city to the requestor. As the requestor has previously had access to the information at issue, it is not excepted from disclosure under section 552.103(a).

You also claim that the document 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[.]

...

Gov't Code § 552.108(a). 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Release of information relating to a pending criminal investigation can 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).

You generally assert that the release of the document will interfere with the investigation and prosecution of crime. As previously noted, the submitted Notice of Warrant for Arrest has previously been released to the requestor by the city. You have not explained, nor can we discern, how the release of a document which has previously been sent to the requestor will interfere with law enforcement or prosecution of a crime. *See* Open Records Decision No. 562 at 10 (1990) (governmental body seeking to withhold information pursuant to statutory predecessor to section 552.108 must meet burden of explaining how and why release of information would interfere with law enforcement and crime prevention). Based on our review of your comments and the submitted information, we determine that you have failed to establish that the information at issue is excepted from disclosure under section 552.108. We therefore determine that the department may not withhold any of the information at issue pursuant to section 552.108.

In summary, if the submitted document is solely a record of the municipal court, the document is a record of the judiciary and is not subject to release under the Act. If, however, the document is maintained by the city, it must be released.

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 "Gregory T. Simpson". The signature is written in a cursive, flowing style.

Gregory T. Simpson
Assistant Attorney General
Open Records Division

GS/sdk

Ref: ID# 205534

Enc: Submitted documents

c: Mr. Bobby Louis Collard
1615 University Drive
Richardson, Texas 75081
(w/o enclosures)