



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 3, 2005

Mr. Myles Porter
District and County Attorney
Fannin County
101 East Sam Rayburn Drive
Bonham, Texas 75418

OR2005-00044

Dear Mr. Porter:

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# 215289.

The Fannin County Attorney (the "county attorney") received a request for information pertaining to a particular investigation and fourteen fact questions seeking statistical information regarding the county attorney. You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, 552.1175, 552.132, and 552.136 of the Government Code. In addition, we have received arguments from the Office of the Attorney General (the "OAG") contending that the requested information regarding the investigation is excepted from disclosure under section 552.108 and arguments from the requestor. *See Gov't Code § 552.304* (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released). We have considered all claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, we address the portion of the request asking factual questions regarding statistics. We note that the Act does not require the county attorney to answer factual questions, perform legal research, create new information in responding to a request, or to produce information in a particular requested format. *See Open Records Decision Nos. 605 at 2*

¹We 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.

(1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989); *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *see also Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681(Tex. App.–Eastland, pet. denied).² Furthermore, the Act does not require a governmental body to disclose information that does not exist at the time a request is received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.–San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). However, a governmental body has a duty to make a good faith effort to relate a request, including any factual questions, to information that it holds. *See* Open Records Decision No. 561 at 8 (1990). You indicate that the county attorney is in the process of compiling records that are responsive to the statistical portion of the request.

We note, however, that you have not submitted any information responsive to the statistical portion of the request. Pursuant to section 552.301(e) of the Government Code, a governmental body must submit the following information to this office within fifteen business days of its receipt of the request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(a), (e). Because the county attorney has not submitted information responsive to the statistical portion of the request, we conclude that the county attorney failed to comply with the procedural requirements of section 552.301 with respect to such information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150

²We note that the requestor has questioned the reasonableness of the estimated cost of providing the requested information. The provisions governing fees that may be charged by a government body under the Act are found at subchapter F of chapter 552. *See* Gov't Code § 552.261 *et seq.* The Texas Building and Procurement Commission ("TBPC") is responsible for the administration and enforcement of these provisions. Section 552.262 directs the TBPC to adopt rules for use by each governmental body in determining charges for providing copies of public information under chapter 552. The rules adopted by the TBPC are found at title 1 of the Texas Administrative Code. The county attorney must comply with subchapter F of chapter 552 and the rules adopted by the TBPC in charging for copies of public information. You should direct any questions that relate to these cost provisions to the TBPC.

(1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Sections 552.1175, 552.132, and 552.136 can provide compelling reasons to withhold information from disclosure. However, because you have not submitted information responsive to the statistical portion of the request, we have no basis for determining whether a compelling reason exists for withholding such information under your remaining claims. Thus, we have no choice but to order the information responsive to the statistical portion of the request released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

We turn now to your arguments regarding the information concerning the specified investigation, a sample of which you have submitted to this office. 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 state that the investigation at issue is “active and ongoing.” Furthermore, the Office of the Attorney General objects to the release of information pertaining to this investigation as it would “interfere with the detection, investigation, or prosecution of crime.” Based upon these representations, we conclude that the release of Exhibit B 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). Thus, you may withhold the submitted information under section 552.108(a)(1) of the Government Code.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 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.

³Generally, basic information held to be public in *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), is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 215289

Enc. Submitted documents

c: Mr. Richard E. Glaser
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(w/o enclosures)