



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2005

Mr. Asem Eltiar
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2005-06740

Dear Mr. Eltiar:

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# 228949.

The Arlington Police Department (the "department") received a request for (1) the department's intoxilyzer machine calibration log, and (2) documentation indicating when two specified videotapes were delivered to the district attorney's office. The submitted information indicates that the department does not have the requested calibration log.¹ You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that a portion of the information submitted as Exhibit B was created after the request for information was submitted to the department. Because the department did not maintain this information at the time it received this request, it is not encompassed by the

¹We note that the 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 for information. 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). Furthermore, the Act does not require a governmental body to answer questions or perform legal research. See Open Records Decision No. 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request for information to any responsive information that is within its custody or control. See Open Records Decision No. 561 at 8-9 (1990).

request and we do not address such information in this ruling. *See Econ. 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) (governmental body not required to disclose information that did not exist at the time request was received).

We now turn to your arguments regarding the remaining information at issue. Section 552.108(a)(1) excepts from disclosure “[i]nformation 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.” 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the information at issue, which consists of a dated videotape receipt log, “describes a pending and open incident that has not received a final disposition by the appropriate court of law.” Based on this representation, we agree that release of the entry referring to the pending case in the submitted videotape receipt log and the date of the district attorney’s receipt of the videotape at issue would interfere with the detection, investigation, or prosecution of crime. However, the department has not met its burden of showing how release of the remaining entries in the log that do not pertain to the pending case at issue would interfere with law enforcement or crime prevention. *See Gov’t Code* § 552.108(a)(1), (b)(1); Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts, unless information does so on its face). Accordingly, none of the remaining information in the log may be withheld pursuant to section 552.108(a)(1). As you claim no other exceptions to disclosure for this information, and it is not otherwise confidential by law, it must be released 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).

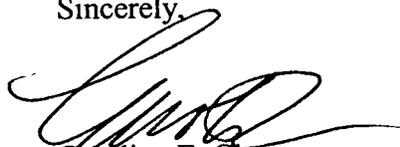
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 228949

Enc. Submitted documents

c: Mr. Paul C. Sampson
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(w/o enclosures)