



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2006

Ms. Bonnie Lee Goldstein
Bonnie Lee Goldstein P.C.
For the City of Italy
P. O. Box 140940
Dallas, Texas 75214-0940

OR2006-08821

Dear Ms. Goldstein:

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# 255971.

The Italy Police Department (the "department"), which you represent, received a request for several categories of information pertaining to a specified citation, city police training and procedures, and a named officer.¹ You state that most of the requested information will be released to the requestor upon payment of estimated costs. You inform us that the department does not maintain some of the requested information and that some of the requested information does not exist.² You claim that the portions of the submitted information are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You also contend that some of the requested information is not subject

¹We understand that the department is seeking clarification of a portion of the request. Accordingly, should the requestor respond to the request for clarification, the department must seek a ruling from this office before withholding any responsive information from her. *See generally* Open Records Decision No. 633 (1999) (providing for tolling of ten-business-day deadline to request attorney general decision while governmental body awaits clarification).

²We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received or to prepare new information in response to a request for information. *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).

to the Act pursuant to section 552.003 of the Government Code because it consists of records of the judiciary. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we understand you to assert that the submitted information responsive to categories A and D of the request are not subject to the Act because they are records of the judiciary. To the extent the information at issue is a record of the municipal court, it is a record of the judiciary and not subject to the Act. *See* Gov't Code §§ 552.003(1)(A), (B) (definition of "governmental body" under Act specifically excludes the judiciary), .021 (Act generally requires disclosure of information maintained by "governmental body"). Thus, if the information at issue is maintained solely by the municipal court, it is not subject to release under the Act and need not be released in response to the present request. However, to the extent a copy of the information at issue is also maintained by the department, it is subject to the Act and may only be withheld if an exception to disclosure under the Act applies as described below.

Section 552.108(a) 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 inform us that some of the submitted information relates to a pending criminal prosecution. Based upon this representation, we conclude that the release of this information 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).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. You state that some of the submitted information relates to a class C misdemeanor case that has been dismissed, and thus, has concluded in a result other than conviction or deferred adjudication. Accordingly, we agree

³We 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.

that section 552.108(a)(2) is applicable to the submitted information relating to the dismissed case.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87. Thus, with the exception of basic information, which must be released, the department may withhold the submitted information relating to the pending class B case under section 552.108(a)(1) and the dismissed case under section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, if the submitted information is maintained solely by the municipal court, it is not subject to release under the Act and need not be released in response to the present request. However, to the extent a copy of the information at issue is also maintained by the department, it is subject to the Act and may only be withheld if an exception to disclosure under the Act applies. With the exception of basic information, which must be released to the requestor, the department may withhold the submitted information relating to the pending criminal investigation under section 552.108(a)(1) of the Government Code and the submitted information relating to the dismissed case under section 552.108(a)(2) of the Government Code.⁴

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

⁴As we are able to resolve this under section 552.108, we do not address your other claim for exception of the information, except to note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

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); *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 Office of the Attorney General 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. 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 255971

Enc. Submitted documents

c: Ms. Karon K. Connelly
5309 Inverness Drive
Corpus Christi, Texas 78413
(w/o enclosures)