



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2007

Ms. Christine Womble
Assistant District Attorney
Frank Crowley Courts Bldg.
133 North Industrial Blvd., LB-19
Dallas, Texas 75207-4399

OR2007-04981

Dear Ms. Womble:

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# 277119.

The Dallas County District Attorney's Office (the "district attorney") received a request for "all records referenced by Article 17.30 Texas Code of Criminal Procedure relevant to personas arrested and brought to the department's jail facility." You argue that the requested information is not subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, 552.1325, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially we address your concerns regarding the request itself. You claim it is not clear what information the requestor is requesting. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request

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.

for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 at 8-9 (1990) states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982), 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In this instance, you must make a good-faith effort to relate the request to information in the district attorney's possession. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 at 8 (1990). In assisting the requestor in clarifying his request, you should advise him of the types of information available. Since you have been able to identify certain types of records that you believe fall within the scope of the request, we will address your arguments for these records.

Next, you state that the district attorney interprets this request as a request for judicial records. Generally, the Act governs the disclosure of information maintained by or for a "governmental body." *See* Gov't Code §§ 552.002, .021. Although the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See* Gov't Code § 552.003(1)(B); Open Records Decision No. 25 (1974). You state that you believe the records requested are records generated by the magistrate and delivered to the court in charge of each arrestee's case. You state that you have submitted information similar to the records requested and those described in Article 17.30 of the Texas Code of Criminal Procedure. To the extent any of the submitted documents are records of the municipal court, these documents are records of the judiciary and are not subject to the Act. *See* Gov't Code §§ 552.003(1)(A), (B) (definition of "governmental body" under Act specifically excludes the judiciary), .0035 (access to information maintained by or for judiciary governed by rules adopted by supreme court); Tex. R. Jud. Admin. 12 (public access to judicial records). Thus, if the records are maintained solely by the judiciary, they are not subject to release under the Act and need not be released in response to the present request. However, to the extent copies of the records are maintained elsewhere by the district attorney, the records are subject to the Act and may only be withheld if an exception to disclosure under the Act applies as described below.

We address the district attorney's claims under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution

of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that the information you have highlighted in Exhibit C relates to a criminal case which concluded in a result other than conviction or deferred adjudication. Based on your representations, we conclude that section 552.108(a)(2) is applicable to Exhibit C.

Section 552.108(a)(1) excepts from public 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[.]” Gov’t Code § 552.108(a)(1). You state the information in Exhibits D through L relates to pending criminal cases. Based on your representations and our review, we find that release of the information in Exhibits D through L would interfere with the detection, investigation, or prosecution of crime. We therefore conclude that section 552.108(a)(1) of the Government Code is applicable to the remaining information.² *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).

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). With the exception of basic information, the district attorney may withhold the information in Exhibits D through L under section 552.108(a)(1). We note that the information you seek to withhold in Exhibit C constitutes basic information. We determine that the district attorney must release this information in order to satisfy the required release of basic information pursuant to *Houston Chronicle*.

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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); *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,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/eb

Ref: ID# 277119

Enc. Submitted documents

c: Mr. Randall D. Kelton
P.O. Box 1
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(w/o enclosures)