



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2007

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County
County Courthouse
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2007-07061

Dear Ms. Lytle:

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# 280392.

The 34th Judicial District Attorney's Office (the "district attorney") received a request for six categories of information related to a specified case regarding a named individual, information related to another named individual's case, and information related to other firearms cases declined and referred to federal authorities. You state that the district attorney has no documents responsive to a portion of the request. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *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). You seek to withhold the submitted information from disclosure under sections 552.101, 552.108 and, 552.111 of the Government Code, Texas Rule of Civil Procedure 192.5, and article 39.14 of the Code of Criminal Procedure.¹ We have considered your arguments and reviewed the submitted information.

¹Although you also raised sections 552.103, 552.107, 552.130, and 552.1325 of the Government Code in your brief dated March 29, 2007, you have provided no arguments explaining how these exceptions are applicable to the submitted information. Therefore, we presume you no longer assert these exceptions to disclosure. Gov't Code §§ 552.301, .302.

Initially, we address your assertion that a portion of the request for information is overly broad. You state that because the requestor has not provided enough information to conduct an effective search, the district attorney's office cannot determine if it has any records responsive to a portion of the request. You further state that you will ask the requestor to clarify the request and provide additional information to assist in the search for responsive documents. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You do not indicate that the district attorney's office has received a response to its request for clarification. To the extent the district attorney's office has not received a response, we find that the district attorney's office has no obligation at this time to release any information that may be responsive to the parts of the request for which it has sought clarification. However, in the event the district attorney's office receives a response to its request for clarification and wishes to withhold any additional information to which the requestor seeks access, the district attorney's office must request another decision from this office. *See* Gov't Code §§ 552.301, 552.302.

You seek to withhold the submitted information under section 552.108. This exception provides in 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:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). Sections 552.108(a)(4) and 552.108(b)(3) are applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. 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 that the governmental body seeks to withhold. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the submitted information was "written by an attorney representing the State of Texas in anticipation of and in preparation for litigation when the case had been presented to the district attorney's office for prosecution" and therefore consists of the district attorney's work product. Upon review, we agree that this information was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude that the submitted information may be withheld from disclosure under sections 552.108(a)(4) and 552.108(b)(3).²

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

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

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/jb

Ref: ID# 280392

Enc. Submitted documents

c: Ms. Theresa Caballero
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(w/o enclosures)