



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 28, 2007

Ms. Cary Grace  
Assistant City Attorney  
City of Austin  
Law Department  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2007-08224

Dear Mr. Grace:

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# 282508.

The Austin Police Department (the "department") received a request for various categories of information related to a specified incident involving the requestor, as well as certain department policies and procedures.<sup>1</sup> You state that the department 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 dismissed); Open Records Decision No. 452 at 3 (1986). You state that you will release a portion of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government

---

<sup>1</sup>You state, and provide documentation showing, that you sought and received clarification from the requestor for portions of the requested information. Based on the requestor's response to the clarification request, he withdrew his request for e-mail records.

Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you inform us that the department does not maintain the requested cellular telephone records because the telephones are the employees' personal cellular telephones and the bills are sent directly to those employees' homes. We note that the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that received the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). A governmental body need only make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

You also state that you are currently determining whether the requested telephone records pertaining to city-owned land line telephones and one or more of the requested staff rosters exist. However, as of the date of this ruling, you have not submitted any such information for our review. Therefore, to the extent this information existed on the date the department received this request, we assume you have released it to the requestor. If you have not released any such information, you must release it at this time. *See* Gov't Code §§552.301(a), (e), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You claim that the submitted information is excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. 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. Gov't Code § 552.108(a)(2). 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 the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on your statements, we agree that the submitted information relates to an investigation that concluded in a final result other than conviction or deferred adjudication. Accordingly, section 552.108(a)(2) is applicable to the submitted information and it may be withheld on that basis.

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

---

<sup>2</sup>We 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.

information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that basic information includes a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-187.

To conclude, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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); *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,

A handwritten signature in black ink that reads "Jordan Johnson". The signature is written in a cursive, flowing style.

Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/eb

Ref: ID# 282508

Enc. Submitted documents

c: Mr. Jack Miller  
Fay Kiln c/o Jack Miller  
8642 Old Corpus Christi Hwy.  
San Antonio, Texas 78223  
(w/o enclosures)