



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2007

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541

OR2007-11251

Dear Ms. Mapes:

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 #288034.

The Killeen Police Department (the "department") received a request for various categories of information pertaining to a specified incident. You state that you have released basic, front-page information pertaining to the incident at issue.¹ You claim that the submitted incident report and photographs are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state that you do not maintain information responsive to the request for tapes from 9-1-1 dispatched call(s) pertaining to the accident, as the dispatch information is maintained by Bell County Communications. Section 552.002 defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in

¹See Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act, if a governmental body owns or has a right of access to the information. *See* Open Records Decision Nos. 462 (1987), 445 (1986); *cf.* Open Records Decision No. 499 (1988).

We note that the Act does not ordinarily require a governmental body to obtain information that is not in its possession. *See* Open Records Decision Nos. 445 (1986), 317 (1982). However, in some instances, the Act does apply to information collected or maintained by third party consultants or contractors of governmental bodies. *See* Open Records Decision No 462 (1987). Where a third body has prepared information on behalf of a governmental body, and the governmental body has a right of access, the information is subject to the Act, even though it is not in the governmental body’s custody. *See* Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure under the Act. *See* Open Records Decision Nos. 585 (1991), 445 (1986) (information prepared by private entity at request or under direction of city subject to disclosure), 437 (1986) (overruled by Open Records Decision No. 585 (1991) to the extent it suggests that a governmental body can waive its right of access to information gathered on behalf of a governmental body). Although you state that Bell County Communications creates and stores the 9-1-1 tapes, you do not address whether the department owns or has a right of access to the information. Because 9-1-1 tapes are fundamental pieces of evidence used by law enforcement agencies charged with investigating crime, we find it extremely difficult to believe that the department does *not* have a right of access to them. Therefore, we assume that the department has a right of access to the requested 9-1-1 tapes, and because the department failed to submit these tapes for our review, we find that it has waived its arguments against their disclosure. Accordingly, the tapes must be released to the requestor.

Section 552.108 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[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted police report and photographs are related to a pending criminal prosecution with the District Attorney’s office. Based on your representation, we conclude that section 552.108(a)(1) is applicable to the submitted information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d177 (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). Accordingly, the department may withhold the submitted information under section 552.108(a)(1).

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, appearing to read "Reg Hargrove". The signature is fluid and cursive, with a long horizontal stroke at the end.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 288034

Enc. Submitted documents

c: Mr. Jon W. Stephenson
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(w/o enclosures)