



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2007

Ms. Jacqueline Cullom Murphy
Assistant Criminal District Attorney
Bexar County District Attorney's Office
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2007-14493

Dear Ms. Murphy:

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# 293928.

The Bexar County Auditor (the "auditor") received a request for all audits of the Bexar County Sheriff's commissary from 1985 to the present and several categories of information regarding the inmate commissary and the Bexar County Sheriff's Office Benevolent Fund. You state that you have no responsive information regarding a portion of the request.¹ You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that a portion of the submitted information consists of minutes of open meetings. Section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides that the "minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

governmental body's chief administrative officer or the officer's designee." Gov't Code § 551.022. As a general rule, the exceptions to disclosure found in the Act do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the minutes that we have marked must be released to the requestor in accordance with the Open Meetings Act.

Next, we note, and you acknowledge, that the auditor has not complied with the time periods prescribed by section 552.301 of the Government Code in submitting your request for a decision to this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. The law enforcement interests under section 552.108 of the Government Code of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us that the Bexar County Criminal District Attorney's Office (the "district attorney") asserts a law enforcement interest in the submitted information. Therefore, we will consider whether the auditor may withhold the information at issue on behalf of the district attorney under section 552.108.

Next, we note that some of the information at issue falls within the scope of section 552.022 of the Government Code. Section 552.022 provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(1), (3), (15). In this instance, the submitted information includes completed reports made of, for, or by the auditor, which are subject to section 552.022(a)(1). Other submitted information is contained in accounts and contracts relating to the receipt or expenditure of public funds, and is subject to section 552.022(a)(3). You have also submitted the mission statement for the Bexar County Sheriff's Office Benevolent Fund, which is subject to section 552.022(a)(15). Section 552.108 is a discretionary exception to disclosure that a governmental body may waive. *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Thus, although information that is subject to section 552.022(a)(1) may be withheld under section 552.108, that exception is not other law that makes information confidential for the purposes of sections 552.022(a)(3) or 552.022(a)(15). Therefore, you may not withhold the submitted information that falls within the scope of sections 552.022(a)(3) and 552.022(a)(15) under section 552.108. We have marked that information. However, we will determine whether the auditor may withhold the remaining information, including information subject to section 552.022(a)(1), on behalf of the district attorney under section 552.108.

We note that the marked information that is subject to section 552.022(a)(3) contains information that is subject to sections 552.130 and 552.136 of the Government Code, both of which constitute "other law" for purposes of section 552.022(a)(3).² Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Accordingly, the auditor must withhold the Texas-issued motor vehicle record information that we have marked under section 552.130.

Section 552.136(b) states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We have marked the account number that you must withhold under section 552.136. You must release the rest of the marked information that is subject to section 552.022(a)(3).

Next, we address your claim under section 552.108 of the Government Code. 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 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

²Unlike other exceptions to disclosure under the Act, this office will raise sections 552.130 and 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

S.W.2d 706 (Tex. 1977). You state that the submitted information is related to an ongoing criminal case. You inform us that the district attorney has requested that this information be withheld from release at this time. Based on your representations, we conclude that the auditor may withhold the remaining information on behalf of the district attorney under section 552.108(a)(1) of the Government Code. *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).

In summary, the open meeting minutes, which we have marked, must be released in accordance with the Open Meetings Act. Except for the information we have marked pursuant to sections 552.130 and 552.136 of the Government Code, the auditor must release the information that is subject to sections 552.022(a)(3) and 552.022(a)(15) of the Government Code.³ The auditor may withhold the rest of the submitted information on behalf of the district attorney under section 552.108(a)(1) 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,

³We note that the submitted information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

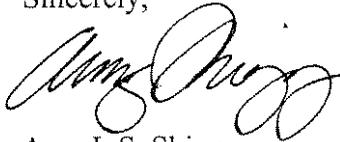
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 293928

Enc. Submitted documents

c: Ms. Cynthia E. Orr
Goldstein, Goldstein & Hilley
310 South Saint Mary's Street, Suite 2900
San Antonio, Texas 78205-3117
(w/o enclosures)