



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2008

Ms. Cathie Childs
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR2008-08126

Dear Ms. Childs:

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# 312630.

The Austin Police Department (the "department") received a request for six categories of information including (1) the oath and bond for the Texas Peace Officer who issued a citation to the requestor; (2) the law pertaining to pleas in Municipal Court; (3) the warrant executed on the requestor; (4) information pertaining to whether the requestor is required to be professionally licensed; (5) information pertaining to the requestor's vehicle; and, (6) the identity of the person in charge of issuing the officer his traffic citation book. You state that a portion of the requested information has been provided to the requestor. You also state that you do not have information responsive to a portion of the request.¹ You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the department. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.— San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

request for information that it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)*. The department received the request on March 28, 2008. In your brief to our office you state "the department believes it will locate the Officer's oath and bond responsive to item number 1, and will supplement this request with these items[.]" However, as of this date, you have not submitted to this office any such information. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301 with regard to this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason to withhold information exists when some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.101 for this information, which can provide a compelling reason for non-disclosure, because you have failed to submit any information responsive to this portion of the request for our review, we have no basis for finding any of it confidential. Thus, we have no choice but to order this information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

Next, we address the information you have submitted for our review. You state that the submitted incident report is "arguably responsive" to the request. Chapter 552 of the Government Code does not require the department to answer factual questions, conduct legal research, or create new information in responding to a request. *See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990)*. However, we note that a governmental body must 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)*. In this case, as you have identified and submitted this incident report for our review, we consider the department to have made a good-faith effort to identify information that is responsive to the request, and we will address the applicability of your claimed exception to the submitted information.

Section 552.108(a) of the Government Code 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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation and prosecution. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *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).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. 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). Thus, with the exception of basic information, the department may withhold the submitted information pursuant to 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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,

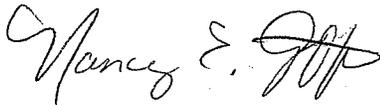
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

Ref: ID# 312630

Enc. Submitted documents

c: Mr. Julio Navarro
c/o 5114 Waterbrook
Austin, Texas 78723
(w/o enclosures)