ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2008

Ms. Cecilia Gamez
Crime Records Bureau
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2008-10670

Dear Ms. Gamez:

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# 317954.

The McAllen Police Department (the "department") received two requests from the same requestor for (1) all reports by a named police officer since January 1, 2003 and (2) the front-page information of all reports by the same named officer during the same time interval. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state that the department would be required to program or manipulate information in order to respond to this request. We have considered your arguments.

Initially, we address your representation that the department "do[es] not [i]ndex the information in the manner requested[,] and complying with the request[s] would require programming or manipulation of data." You also state that "complying with [the] request[s] will result in substantial disruption to ongoing operations." We note that a request for public information that requires a governmental body to program or manipulate existing data is not considered to be a request for the creation of new information.[1] *See* Gov't Code § 552.231;

[1]We note that in responding to a request for information under the Act, a governmental body is not required to answer factual questions, conduct legal research, create new information, or take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds such information on behalf of the governmental body that received the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989), 518 at 3 (1989). But a governmental body must make a good-faith effort to relate a request to any responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

Fish v. Dallas Indep. Sch. Dist., 31 S.W.3d 678, 681-82 (Tex. App.—Eastland 2000, pet. denied) (plaintiffs' request required manipulation of existing data rather than creation of new information); Open Records Decision No. 661 at 6-7 (1999). Thus, if information that is otherwise available to a governmental body can be programmed or manipulated for the purpose of responding to a request for information, then the governmental body has access to information that is responsive to the request.[2] Section 552.231 of the Government Code prescribes procedures that must be followed if, in responding to a request for information, a governmental body would be required to program or manipulate data. *See* Gov't Code § 552.231(a) (written statement described by Gov't Code § 552.231(b) shall be provided to requestor if governmental body determines (1) that responding to request for information will require programming or manipulation of data and (2) that compliance with request is not feasible or will result in substantial interference with ongoing operations or that information could be made available in requested form only at costs that cover programming and manipulation).

You do not indicate that the department has provided the requestor with the written statement prescribed by section 552.231. A governmental body that fails to comply with the requirements of section 552.231 is not otherwise excused from complying with its obligation under the Act to either release the requested information or ask this office to determine whether the information is excepted from public disclosure. *See* Gov't Code §§ 552.006, .301, .302; *Fish v. Dallas Indep. Sch. Dist.,* 31 S.W.3d at 682 (governmental body that had not provided written statement required by Gov't Code § 552.231 not released by that section from obligation to provide requested information); *see also* Gov't Code §§ 552.001(b), .021, .221; Open Records Decision No. 664 (2000). We also note that the administrative inconvenience of providing public records to a requestor in response to an open records request does not constitute sufficient grounds for denying such a request. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976).

A governmental body that seeks to withhold requested information from a member of the public must comply with section 552.301 of the Act in doing so. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not comply with section 552.301 in requesting an attorney general decision, the requested information is

---

[2]We note that the Act defines "manipulation" as "the process of modifying, reordering, or decoding of information with human intervention." Gov't Code § 552.003(2). "Programming" is defined as "the process of producing a sequence of coded instructions that can be executed by a computer." *Id.* § 552.003(4).

presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

The department claims exceptions to disclosure under sections 552.101 and 552.108 of the Government Code. As of the date of this decision, however, you have not submitted either the information that the department seeks to withhold or a representative sample of the information. Thus, because the department has not complied with section 552.301 in requesting this decision, the requested information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). In failing to comply with section 552.301, the department has waived section 552.108 and may not withhold any of the requested information under that exception. The applicability of section 552.101, which you also claim, can provide a compelling reason for non-disclosure under section 552.302.[3] But, because you have not submitted any information that the department seeks to withhold under that exception, we have no basis for concluding that there is any compelling reason to withhold information under section 552.101. Therefore, we have no choice but to order you to release the requested information in accordance with section 552.302. If you believe that any of the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney

---

[3]Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

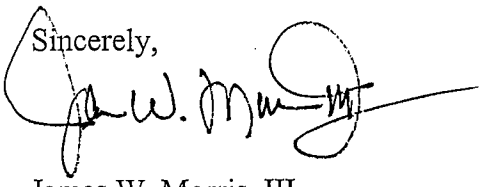
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jh

Ref: ID# 317954

c: Mr. Jason C. Honeycutt
Kittleman, Thomas & Gonzales, LLP
P.O. Box 1416
McAllen, Texas 78505