



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2008

Ms. Jana K. McCown
First Assistant District Attorney
Williamson County
405 Martin Luther King Street, No. 1
Georgetown, Texas 78626

OR2008-13980

Dear Ms. McCown:

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# 324436.

The Williamson County District Attorney (the "district attorney") received a request for (1) copies of all mock ups used at a press conference concerning the death of a named individual, (2) all statements in the district attorney's possession regarding that individual's death, (3) all communications concerning Round Rock Police officers' involvement in the named individual's death or their involvement in the Round Rock Police Department's mental health unit for a specified period, and (4) all communications between the district attorney and the Round Rock Police Association concerning the shooting of the named individual. You state that there is no information responsive to the fourth category of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.108, 552.111, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that the district attorney has asked the requestor to clarify the first category of the request. We note that a governmental body may communicate with a

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request for information or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999). We have no indication that the district attorney has received a response to its request for clarification. Accordingly, we find that the district attorney has no obligation at this time to release any information that may be responsive to this category of the request. However, if the district attorney receives a response to its request for clarification and wishes to withhold any information to which the requestor seeks access, then the district attorney must request another decision from this office. *See* Gov't Code §§ 552.301, 552.302.

Section 552.108 of the Government Code provides in part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code §§ 552.108(a)(2), (b)(2). A governmental body claiming section 552.108 must reasonably explain how and why the release of the information at issue would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(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. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that Exhibit B relates to a criminal investigation that did not result in conviction

or deferred adjudication. You state that Exhibit C consists of records maintained for internal use in matters relating to prosecution which relate to a criminal investigation which did not result in conviction or deferred adjudication. Based upon these representations and our review, we conclude that the district attorney may withhold Exhibit B under section 552.108(a)(2) of the Government Code and Exhibit C under section 552.108(b)(2) 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). As our ruling is dispositive, we need not address your remaining arguments.

In summary, the district attorney may withhold Exhibit B under section 552.108(a)(2) of the Government Code and may withhold Exhibit C under sections 552.108(b)(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 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 general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

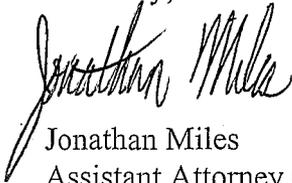
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 324436

Enc. Submitted documents

c: Mr. Jeff Edwards
Whitehurst, Harkness, Ozmun & Brees
P.O. Box 1802
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(w/o enclosures)