



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2009

Ms. Barbara Boulware-Wells
Akers & Boulware-Wells, L.L.P.
Attorneys at Law
816 Congress Avenue, Suite 1725
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OR2009-10360

Dear Ms. Boulware-Wells:

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# 350178.

The Balch Springs Municipal Court (the "court"), which you represent, received a request for information related to 1) a specified prosecutor; 2) a specified judge; 3) a named officer; and, 4) the city's police department. You indicate that some of the requested information does not currently exist.¹ You also state that the some of the requested information is not subject to the Act. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you assert that some of the requested information is not subject to the Act as records of the judiciary. In this instance, you explain that the court is the custodian of the records pertaining to the prosecutor, judge, and the verified complaint and that this information is maintained by the court as an agent of the judiciary. *See* Gov't Code. § 552.003(1)(B) (definition of governmental body does not include judiciary). Accordingly, the court states it has not submitted these records for our review. Because the court has not requested a

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

decision from our office on this issue, this ruling does not address the propriety of this determination by the court.

Next, you assert that the submitted information is subject to section 552.108 of the Government Code. We note that section 552.022 of the Government Code is applicable to some of the submitted information. Section 552.022 provides in relevant 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:

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

The submitted insurance policy record consists of information in a contract relating to the expenditure of funds by a governmental body. Thus, pursuant to section 552.022(a)(3), the court may only withhold the submitted insurance policy if it is confidential under other law. Although, you state that the submitted records are excepted from disclosure under section 552.108, this is a discretionary exception to disclosure that protects the governmental body's interests and is, therefore, not other law that makes information expressly confidential for purposes of section 552.022(a). See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Consequently, the court may not withhold the information, which we have marked, under section 552.108 of the Government Code. As you raise no other exceptions for this information, it must be released.

You assert that the remaining information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108 provides in relevant part:

(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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(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:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. You state that the prosecutor for the court has reviewed the information at issue and determined that it relates to a pending prosecution. Based on this representation and our review, we conclude release of the information at issue 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). Therefore, the court may withhold the remaining submitted information under section 552.108(a)(1).

In summary, the court need not release records of the judiciary in response to this request. The court must release the information subject to section 552.022(a)(3) of the Government Code, which we have marked. The remaining submitted information may be withheld under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/cc

Ref: ID# 350178

Enc. Submitted documents

c: Requestor
(w/o enclosures)