



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2010

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

OR2010-07671

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# 380724 (Request #W002165-030910).

The City of McAllen (the "city") received a request for the policy and operating manual for the daily operations of the city jail. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note that the requestor also asks three questions about whether the city's municipal court sentences persons to serve time in the city jail for certain offenses and the terms of such sentences, if any. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request for information under the Act.¹ Likewise, a governmental body that receives a request is not required to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on the governmental body's behalf.² Ordinarily, however, 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.³

¹See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

²See Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989).

³See Open Records Decision No. 561 at 8-9 (1990).

In this instance, you argue that the requestor's questions cannot be answered because they pertain to municipal court procedures. You contend that such procedures involve judicial information that is not subject to the Act. Although the Act is applicable to information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body," Gov't Code § 552.002(a)(1), the Act's definition of governmental body "does not include the judiciary." *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act, but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). Based on your representations, we agree that any information maintained by the municipal court that would be responsive to the questions posed by the requestor is not subject to the Act. Therefore, the city has no obligation under the Act to respond to the requestor's questions.⁴

Next, we address your arguments against disclosure of the submitted information. Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of section 552.108(b)(1), a governmental body must explain how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

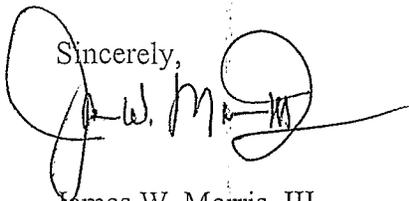
⁴You indicate that the requestor's questions have been referred to the municipal court. We note that records of the judiciary may be public under other sources of law. *See* Gov't Code §§ 29.007(d)(4) (complaints filed with municipal court clerk), .007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

In this instance, the submitted information consists of the city police department's "Jail Operations Procedure Manual." You explain that the manual contains detailed information relating to security; procedures for emergencies, escapes, riots, and searches; and other matters concerning the jail and personnel assigned to the jail. You contend that the release of such information would jeopardize the security of the jail and the safety of its personnel. Based on your representations and our review of the information at issue, we conclude that the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. We find that you have not sufficiently demonstrated that the release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Therefore, the city may not withhold any of the remaining information under section 552.108(b)(1). As the city claims no other exception to disclosure, the rest of the submitted information must be released.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large circular flourish on the left side.

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

JWM/rl

Ref: ID# 380724

Enc: Submitted documents

cc: Requestor
(w/o enclosures)