



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2011

Mr. Jason D. King
Counsel for City of Balch Springs
Akers & Boulware-Wells, L.L.P.
6618 Sitio Del Rio Boulevard, Building E, Suite 102
Austin, Texas 78730

OR2011-06448

Dear Mr. King:

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# 418083.

The City of Balch Springs (the "city"), which you represent, received a request for all information generated in connection with a specified prosecution. You claim the requested information is either not subject to the Act or excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

You assert the information in Exhibit C is not subject to the Act because it is maintained by the city's municipal court and, thus, consists of records of the judiciary. Section 552.003(b) of the Government Code excludes the judiciary from the Act. Therefore, the Act neither authorizes information held by the judiciary to be withheld nor requires that it be disclosed. *See* Open Records Decision No. 25 (1974). We note, however, the request was received by the city secretary, who is the public information coordinator for the entire city. We further note the requestor did not request the records from the municipal court. Accordingly, to the extent the submitted information is maintained solely by the city's municipal court, it is not

subject to release under the Act and need not be released in response to the present request.¹ *See* Gov't Code § 552.0035 (access to information maintained by or for judiciary is governed by rules adopted by supreme court); Tex. R. Jud. Admin. 12 (public access to judicial records). However, to the extent the information in Exhibit C or copies of it are also maintained by a non-judicial city department, the information in Exhibit C is subject to the Act and must be released.

We next note Exhibit B consists only of page 1 of a 2-page arrest report. The city did not submit any other information responsive to this portion of the request. Thus, we assume that, to the extent any additional responsive information maintained by the city existed when the city received the request for information, the city has released it to the requestor. If not, then the city must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

You assert the information in Exhibit B is excepted from disclosure under section 552.108 of the Government Code, which provides, in pertinent 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 [required public disclosure] if:

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

(2) it is information that the 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 [required public disclosure] if:

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

¹We note that records of the judiciary may be public under other sources of law. *See, e.g.,* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *see id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. 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).

(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)(1)-(2), (b)(1)-(2). Subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In your comments to this office, although you quote subsection 552.108(a)(1), you provide arguments to support a claim under subsections 552.108(a)(2) and 552.108(b)(2). As previously stated, subsections 552.108(a)(2) and 552.108(b)(2) pertain to information relating to a concluded criminal investigation that did not result in conviction or deferred adjudication. You have submitted a statement from the city's Chief of Police, who asserts Exhibit B relates to a concluded criminal investigation that did not result in conviction or deferred adjudication. Accordingly, based on your representations, we conclude section 552.108(a)(2) is applicable to Exhibit B.

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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front-page offense and arrest information, the city may withhold Exhibit B under section 552.108(a)(2).

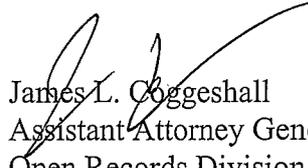
To conclude, the city must release to the requestor the documents in Exhibit C if they are maintained by a non-judicial city department. With the exception of basic information, the city may withhold Exhibit B under subsection 552.108(a)(2) of the Government Code.

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

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 418083

Enc. Submitted documents

c: Requestor
(w/o enclosures)