



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2012

Ms. Heather Stebbins  
Assistant City Attorney  
City of Kerrville  
800 Junction Highway  
Kerrville, Texas 78028

OR2012-07931

Dear Ms. Stebbins:

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# 454729.

The Kerrville Police Department (the “department”) received a request for police reports, investigations, complaints, photographs, videos, tapes and transcripts of interrogations, search warrants for specified locations, and a list of the property seized corresponding to the specified search warrants. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We begin by addressing your claim that the present request is not a request for information under the Act because it is a request for discovery to prepare for litigation. Section 552.0055 of the Government Code provides, “[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under [the Act].” Gov’t Code § 552.0055. This section does not apply in all instances in which a governmental body could have received such a subpoena or discovery request. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (stating in interpreting statutes, goal of discerning

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<sup>1</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

legislature's intent is served by beginning with statute's plain language because it is assumed legislature tried to say what it meant and its words are, therefore, surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)) (“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.”).

You do not assert the request the department received is in fact a “subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure.” Gov’t Code § 552.0055. Nothing in the request reflects it meets the elements of a subpoena duces tecum. *See* Code Crim. Proc. arts. 24.02 (defining subpoena duces tecum), .03 (describing procedures for obtaining subpoenas, including subpoena duces tecum). Furthermore, you have not demonstrated, and the request does not indicate, the request for information constitutes a discovery request issued in compliance with a statute or a rule of civil or criminal procedure. Although discovery in a contested case is conducted under the Texas Rules of Civil Procedure, nothing prevents the requestor from also submitting a request for information under the Act. Therefore, we find the department received a request for information under the Act. Consequently, we will consider your claimed exception to disclosure for the information at issue.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to an ongoing criminal investigation. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of the requested information 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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*. *See* 531 S.W.2d at 186-88. Thus, with the exception of the basic front page offense and arrest information, you may withhold

the requested information from disclosure based on section 552.108(a)(1) of the Government Code.<sup>2</sup>

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](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 large, handwritten signature in black ink, appearing to read 'Kathryn R. Mattingly', is written over the typed name and title.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 454729

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.