



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2012

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-2268

OR2012-14573

Dear Ms. Grace:

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# 465343.

The Austin Police Department (the "department") received a request for all the photographic evidence gathered at a specified location during a specified time period, and a second request from the same requestor for all the photographic evidence gathered at the scene of a specified incident that was entered into evidence during the trials of two named individuals. 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 submitted representative sample of information.¹

Initially, you inform us that the department is unaware as to which of the photographs maintained by the department, if any, were introduced as exhibits in the trials of the two named individuals. We note that, in responding to a request for information under the Act,

¹We 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.

a governmental body is not required to answer factual questions, conduct legal research, or disclose information that did not exist at the time the request was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). We also note the Act does not require a governmental body 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 behalf of the governmental body that receives the request. *See Gov't Code* § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See Open Records Decision No. 561 at 8-9 (1990)*. In this case, as you have submitted responsive information for our review and raised an exception to the disclosure of this information, we will consider the department to have made a good faith effort to identify information maintained by the department that is responsive to the requests, and we will address the applicability of the claimed exception to the submitted information.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Gov't Code* § 552.108(a)(1). 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 inform us that the submitted information was the subject of a murder investigation that resulted in the convictions of the two named individuals. However, you also inform us that both of these convictions were overturned by an appellate court and this information now pertains to an open murder investigation. Based on your representations and our review, we conclude the 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) (court delineates law enforcement interests that are present in active cases), *writ refused n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the submitted information 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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'KLC', written over a horizontal line.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 465343

Enc. Submitted documents

c: Requestor
(w/o enclosures)