



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2013

Ms. Catarina Gonzales Cron  
Assistant City Attorney for the City of Mont Belvieu  
Randle Law Office, Ltd., L.L.P.  
820 Gessner, Suite 1570  
Houston, Texas 77024

OR2013-04145

Dear Ms. Cron:

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# 481315.

The City of Mont Belvieu (the "city"), which you represent, received a request for personnel information pertaining to a specified individual, information pertaining to city employee unions, the city's pension or retirement plan, the completion of specified drainage ditches, and the number of sexual offenders that reside in the city. You state the city has released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has asked the city to answer questions. In responding to a request for information under the Act, 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 Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the city has made a good-faith effort to do so.

Next, we note the submitted information includes a court filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under the Act or other law. Gov't Code § 552.022(a)(17). You raise section 552.107(2) of the Government Code for this information. Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). However, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is made confidential under the Act or other law. *Id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the city may not withhold the information at issue under section 552.107(2). As you raise no further exceptions for this document, it must be released. However, we will address your arguments under section 552.107(2) for the information not subject to section 552.022 of the Government Code.

You claim that the city is prohibited by a court order from releasing the sexual offender registration information pursuant to section 552.107(2). You have submitted for our review a copy of an "Order Requiring Respondent to Register as a Sex Offender." The order states that the sex offender registration information is not public information and prohibits law enforcement and criminal justice agencies from disseminating the registration information to the public. We note Chapter 62 of the Code of Criminal Procedure establishes and describes the sex offender registration program. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information to the Department of Public Safety ("DPS") sex offender registration database: the person's full name; each alias used by the person and any home, work, or cellular telephone number of the person; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number, driver's license number, any home, work, or cellular telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b).

We find that article 62.005 of the Code of Criminal Procedure governs the availability of sex offender registration information. Thus, the submitted court order may not override the provisions of this statute. *Houston Chronicle Publ'g Co. v. Edwards*, 956 S.W.2d 813, 817 (Tex. App.—Beaumont 1997, orig. proceeding) (court has no inherent power to ignore express statutory provision that makes information public); *Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492, 499 (Tex. App.—Beaumont 1997, orig. proceeding) (court may not seal search warrant affidavit that statute expressly provided is public). Accordingly, the city must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b).

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the Chambers County District Attorney’s Office (the “district attorney’s office”) objects to the release of Exhibit B at this time because release of the information at issue would interfere with the investigation of the case. Based on the objections made by the district attorney’s office and our review, we find the release of Exhibit B 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); *see also* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). Therefore, the city may withhold Exhibit B under section 552.108(a)(1) on behalf of the district attorney’s office.<sup>1</sup>

In summary, the city must release the information we have marked under section 552.022(a)(17) of the Government Code. The city must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b). The city may withhold Exhibit B 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

---

<sup>1</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

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 handwritten signature in black ink, appearing to read "Jeffrey W. Giles". The signature is fluid and cursive, with a large initial "J" and "G".

Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 481315

Enc. Submitted documents

c: Requestor  
(w/o enclosures)