



Office of the Attorney General

State of Texas

December 9, 1996

DAN MORALES
ATTORNEY GENERAL

Ms. Linda Wiegman
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR96-2325

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36704.

The Texas Department of Health (the "department") received an open records request for "a complete, unedited copy of the policy and procedure manual used by your investigators" during the course of investigating complaints filed against licensed professional counselors. You state that you have released portions of the requested manual to the requestor. You have submitted to this office for review, however, certain highlighted portions of the manual that you contend are excepted from required public disclosure by section 552.108 of the Government Code.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[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." Gov't Code § 552.108 (emphasis added). You specifically do not contend that the department is a "law-enforcement agency" for purposes of section 552.108. However, you seek to withhold the highlighted portions of the manual pursuant to this exception because you assert the information at issue is

not routine investigative procedures or techniques that are commonly known and release would unduly interfere with law enforcement and crime prevention since the department often does forward the information to the appropriate federal, state, or local law enforcement agency if the investigation reveals criminal activity.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a

legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. See Open Records Decision Nos. 133 (1976), 127 (1976).

The applicability of section 552.108 must be determined on a case-by-case basis. See Open Records Decision No. 409 (1984). In Open Records Decision No. 287 (1981), this office observed that the best judge of whether the release of a law enforcement agency's records and notations would interfere with law enforcement was ordinarily the law enforcement agency possessing the record. However, where records pertaining to a particular active criminal investigation are held by an agency outside of law enforcement, section 552.108 may be invoked by any proper custodian of the information which relates to that investigation. Open Records Decision Nos. 474 (1987), 372 (1983). The protection afforded by section 552.108 in such instances is to protect the interests of the law-enforcement agency, not the actual holder of the records at issue.

In this instance you seek to withhold certain procedures utilized by the department during the course of its own licensing investigations. The information the department gathers through the use of these procedures and techniques may or may not be passed on to a law-enforcement agency, depending on the circumstances of the particular case being investigated. Although the actual information that the department has forwarded to a law-enforcement agency in connection with one of its investigations generally would be protected from public disclosure during the pendency of the criminal investigation, your contention that the techniques themselves should similarly be withheld for law-enforcement purposes is too remote a consideration for purposes of section 552.108. The information at issue is neither "held by a law enforcement agency," nor is it "[a]n internal record or notation of a law enforcement agency." We therefore conclude that none of the information you have highlighted may be withheld pursuant to section 552.108. The department therefore must release this information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad

Assistant Attorney General
Open Records Division

Ref.: ID# 36704

Enclosures: Submitted documents

cc: Ms. Hazel Martin, L.P.C.
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(w/o enclosures)