



September 20, 1999

Ms. Susanna K. Holt  
Assistant Attorney General  
Executive Administration  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR99-2636

Dear Ms. Holt:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 127434.

The Office of the Attorney General of Texas (the "OAG") received a request for the following information:

all records of subpoenas, correspondence, memos or other written communications in relation to the criminal and civil investigations of former Texas Attorney General Dan Morales, Attorney Marc Murr, or any of the Private Attorneys hired on a contingency fee basis for the state's litigation against Tobbacco [sic] companies.

You explain that some of the requested information "will be made available" to the requestor. In your initial letter to this office, you state that you seek to withhold the requested information under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code.<sup>1</sup> In subsequent correspondence to this office, you offer arguments in

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<sup>1</sup>Although you cite to sections 552.107 and 552.111, you did not explain how the claimed exceptions apply to the information at issue, thus we are unable to consider these exceptions. *See* Gov't Code § 552.301(b); Open Records Decision No. 363 (1983). We note that chapter 552 of the Government Code places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974).

support of the section 552.103 and section 552.108 claims. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

Section 552.108, the "law enforcement," exception excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

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

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

....

(c) This section does not except from the requirements of section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). You have informed this office that the responsive information relates to an investigation being conducted by the Federal Bureau of Investigation (FBI) and that both the FBI and the United States Attorney have requested that the information not be released. You also state that those entities have asked that this information be withheld, because release at this time would interfere with the ongoing investigation. In addition, we have previously ruled that related information is excepted from disclosure under section 552.108, because it "relates to an investigation being conducted by . . . the FBI and the United States Attorney." Open Records Letter No. 99-1431 at 2 (1999); *see also* Open Records Letter Nos. 99-2383 (1999), 99-2372 (1999), 99-2362 (1999), 99-2337 (1999), 99-2310 (1999), OR99-1841 (1999). On June 28, 1999, you informed us that the federal investigation is ongoing. Therefore, based on your representations, you may withhold the submitted information from disclosure under section 552.108.

As we resolve your request under section 552.108, we need not consider you other claimed exception at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision.<sup>2</sup> 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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 127434

Encl. Submitted documents

cc: Mr. Darrell Azar  
KTRH  
221 East 9<sup>th</sup> Street, Suite 400  
Austin, Texas 78701  
(w/o enclosures)

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<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.