



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 4, 2003

Mr. T. Scott Petty
Assistant County Attorney
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2003-5400

Dear Mr. Petty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185294.

The Harris County Public Health & Environmental Services Office (“PHES”) received a request for information relating to a particular contract. You advise that some of the requested information has been made available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information, which includes representative sample documents.¹

Section 552.108(a)(1) of the Government Code excepts from required public 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[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why

¹ We assume that the “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 that those records contain substantially different types of information than that submitted to this office.

section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). As you acknowledge, information held by PHES is not information held by a law enforcement agency. However, this office has recognized that information that is not held by a law enforcement agency may be excepted from disclosure under section 552.108 if the information relates to a pending criminal investigation being conducted by a law enforcement agency. *See* Open Records Decision Nos. 474 (1987) (statutory predecessor to section 552.108 may be invoked by proper custodian of information relevant to incident involving allegedly criminal conduct that is still under active investigation or prosecution), 372 (1983). Similarly, this office has determined that records from an administrative investigation of a non-law enforcement agency may be withheld under section 552.108 if the records reveal possible criminal conduct that the non-law enforcement agency intends to report or has reported to the appropriate law enforcement agency or prosecutor. Attorney General Opinion MW-575 (1982); Open Records Decision No. 493 (1988).

You advise that the submitted information is contained in the file for the contract referenced in the request for information, and that PHES is investigating the file in order to determine if a particular entity has committed fraud. You further state that the Harris County Auditor (the "auditor") is conducting an audit for the same purpose, and that the submitted records would be used in a law enforcement investigation if the auditor finds evidence of fraud which could lead to prosecution. You have provided an affidavit from an assistant county auditor, who states that the auditor intends to report any evidence of fraud to the appropriate law enforcement agency. Based on your representations and the information you provided, we find that release of the submitted 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore conclude that PHES may withhold the submitted information as a proper custodian of the information based on section 552.108(a)(1) of the Government Code. *See* Open Records Decision Nos. 474 (1987), 372 (1983). As section 552.108 is dispositive, we do not reach your remaining arguments against disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

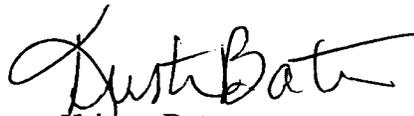
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 185294

Enc. Submitted documents

c: Mr. Rodney N. Goodie
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(w/o enclosures)