



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2004

Ms. Zindia T. Thomas  
Assistant Attorney General  
Assistant Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2004-7720

Dear Ms. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208793.

The Office of the Attorney General (the "OAG") received a request for a copy of all records relating to the OAG's investigation of a named individual. You state that you have released a copy of the criminal indictment. You claim that the submitted information, which is maintained by the OAG's Medicaid Fraud Control Unit, is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered your claimed exceptions to disclosure and have reviewed the submitted information.

Initially, we note that one of the submitted documents is subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides that information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is public unless that information is expressly made confidential under other law. Gov't Code § 552.022(a)(3). As prescribed by section 552.022(a)(3), this document must be released unless it is confidential under other law. Section 552.108 is a discretionary exception to disclosure that protects the interests of the governmental body and may be waived. *See* Open Records Decision No. 177 (1977) (construing statutory predecessor). As such, section 552.108 is not other law that makes information expressly confidential for purposes of section 552.022(a)(3). *See* Open Records Decision No. 665 at 2 n.5 (2000) (addressing distinction between mandatory and discretionary exceptions to disclosure).

Consequently, the marked document must be released. We now address your section 552.108 claim for the remaining submitted information.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, 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* 552.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you explain that Exhibit C relates to the ongoing criminal investigation and prosecution of the named individual for Medicaid fraud. You also state that the release of these records will compromise the investigation and prosecution of this matter. Based on your representations and our review of the records, we agree that the OAG may withhold the remaining submitted records under section 552.108(a)(1). *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.<sup>1</sup>

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

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<sup>1</sup>Because we are able to make a determination under section 552.108, we need not address your arguments under section 552.130.

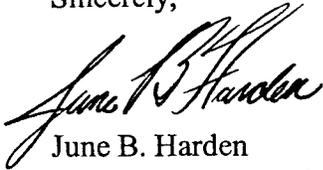
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 208793

Enc: Submitted documents

c: Mr. James D. Day, II  
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(w/o enclosures)