



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2006

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2006-01418

Dear Ms. Smith:

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# 242076.

The Texas Department of Public Safety (the "department") received a request for a specific report prepared by a Texas Ranger. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

We initially address the requestor's contention that a copy of the requested information has previously been provided to the Sutton County Attorney's Office. We note that the Act does not permit selective disclosure of information to the public. *See* Gov't Code 552.007(b); Open Record Decision No. 463 at 1-2 (1987). Thus, if information has been voluntarily released to any member of the public, that same information may not subsequently be withheld from the public unless its public disclosure is expressly prohibited by law. *See* Gov't Code 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). However in Open Records Decision No. 661 (1999) this office determined that whether a governmental entity may release information to another governmental entity is not generally a question under the Act as the Act is concerned with the required release of information to the public. *See* Gov't Code §§ 552.001, .002, .021; Open Records Decision No. 655 (1997).

This office has long recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655; *but see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655, 414 (1984). A state agency's transfer of information to another entity that is subject to the Act does not generally constitute a release of the information to the public for purposes of section 552.007 of the Act. *See, e. g.*, Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Gov't Code §§ 552.007, .352. We therefore find that providing the information at issue to the Sutton County Attorney's Office did not constitute a release to the public for purposes of section 552.007 and does not prevent the department from claiming that this information is excepted from disclosure under section 552.108 of the Government Code.

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). 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* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that this exception is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution).

In this instance, you explain that the submitted materials were created as part of your investigation into alleged misconduct by a named officer. You do not indicate that the department conducted a criminal investigation. However, you explain that the results of this investigation have been provided to the Sutton County Attorney's Office for use in a pending criminal prosecution. Thus, you state that release of the submitted information would interfere with the ongoing criminal prosecution by that office. We note that the two investigations cover the same factual situations and circumstances. Based upon your

representations and our review of the submitted information, we conclude that the 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.) (court delineates law enforcement interests that are present in active cases). Thus, we agree that section 552.108(a)(1) is applicable to the submitted information. *See Open Records Decision No. 372 at 4 (1983)* (law enforcement exception can apply to information held by proper custodian of information relating to incident allegedly involving criminal conduct that remains under active investigation or prosecution); *see also Open Records Decision No. 586 (1991)* (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Accordingly, you may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "Matt McLain".

Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/segh

Ref: ID# 242076

Enc. Submitted documents

c: Mr. Orlando F. DeHoyos  
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(w/o enclosures)