



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 6, 2007

Ms. Holly C. Lytle  
Assistant County Attorney  
County Courthouse  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2007-07095

Dear Ms. Lytle:

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# 280395.

The 34<sup>th</sup> Judicial District Attorney's Office (the "district attorney") received a request for information (1) concerning the credibility of a named detective, (2) identifying law enforcement individuals involved in any cover up regarding the named detective, and (3) revealing the *Brady* notices sent to defense attorneys in cases involving the "above law enforcement agents." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from 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." Gov't Code § 552.108(a)(1). 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). You inform us that the investigation initially begun by the district attorney's office regarding the named detective has been turned over to the Federal Bureau of Investigation (the "FBI"), which is now conducting its own criminal investigation. You have submitted a letter from an FBI agent

who objects to release of the submitted information because it “would jeopardize an ongoing [f]ederal investigation.” Based on these representations and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to the submitted information, and it may be withheld on this basis. *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); *see also* Open Records Decision No. 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information which relates to incident).<sup>1</sup> As our conclusion under section 552.108 is dispositive, we need not address your arguments under sections 552.101, 552.103 and 552.111.

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).

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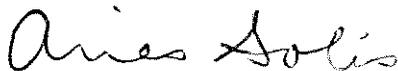
<sup>1</sup>When a governmental body discloses information because it reasonably concludes it has a constitutional obligation to do so, it can still invoke section 552.108. *See* Open Records Decision No. 454 (1986); *see also* *Brady v. Maryland*, 373 U.S. 83 (1963) (prosecution is required to provide defense with all partially exculpatory evidence).

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,



Aries Solis  
Assistant Attorney General  
Open Records Division

AS/eeg

Ref: ID# 280395

Enc. Submitted documents

c: Mr. Stuart L. Leeds  
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(w/o enclosures)