



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2007

Ms. Judith K. Magness
Assistant County Attorney
Brazos County
300 East 26th Street
Bryan, Texas 77803-5327

OR2007-07141

Dear Ms. Magness:

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# 280470.

The Brazos County Sheriff's Office (the "sheriff") received a request for fourteen categories of information pertaining to a named deputy sheriff, including complaints, names of persons who investigated complaints, written responses to complaints, final determinations regarding complaints, letters of disciplinary action, proof that the named deputy sheriff completed counseling or corrective training, the deputy sheriff's employment background, original application for employment, academy scores and evaluations, certificates of completion, evaluations and scores concerning continuing training, current salary information, amount of overtime pay received for 2006 and 2007, and any and all specialized units to which the deputy sheriff was assigned. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, and 552.130 of the Government Code. We have considered the arguments you claim and reviewed the submitted representative sample of information.¹

¹We 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 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.

Initially, we note that a portion of the requested information was the subject of a prior ruling by this office, issued as Open Records Letter No. 2007-06113 (2007). In this letter ruling, we ruled that the sheriff must release the salary information pursuant to section 552.022(a)(2) of the Government Code. We also ruled that the sheriff may withhold the remaining information pursuant to section 552.108(a)(1). Your brief shows the pertinent facts and circumstances have not changed since the issuance of Open Records Letter No. 2007-06113. Thus, the sheriff must continue to rely on Open Records Letter No. 2007-06113 for the information that was at issue in that prior ruling. *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when: 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). For the information not previously ruled upon, we will address the submitted arguments.

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform us that the submitted information consists of personnel records concerning a Brazos County Deputy Sheriff who will be one of the State’s witnesses in a pending criminal case. You assert that the submitted information relates to the pending case because it is the type of information used at trial to determine the credibility of the officer as a witness, his competency to testify, and his qualifications as an expert witness. You also have submitted a letter from an assistant county attorney for Brazos County. The assistant county attorney states that her office is prosecuting the pending case. She asserts that the release of the submitted information at this time would interfere with the prosecution of the case. Based on your representations, the assistant county attorney’s letter, and our review of the submitted information, we conclude that the sheriff may withhold the remaining requested information 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).²

In summary, the sheriff must continue to rely on our ruling in Open Records Letter No. 2007 06113, with respect to the information requested in that instance that was also at issue in this request. The sheriff may withhold the remaining requested information under section 552.108(a)(1).³

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

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

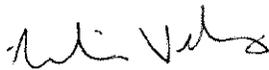
³You request previous determinations for certain exceptions. We note that Open Records Decision 670 (2001) grants a previous determination to all governmental bodies for information excepted under section 552.117(a)(2). Additionally, section 552.147(b) permits a governmental body to withhold a social security number without asking this office for a decision to withhold it.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 280470

Enc. Submitted documents

c: Mr. Craig A. Greening
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(w/o enclosures)