



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 27, 2009

Mr. Mark Shoesmith  
Assistant City Attorney  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901-1196

OR2009-01046

Dear Mr. Shoesmith:

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# 333151.

The El Paso Fire Department (the "department") received a request for the witness statement given by a named individual during an administrative investigation regarding the requestor. You claim the submitted witness statement is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

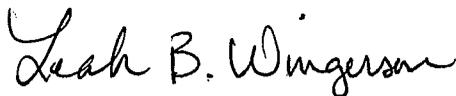
Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency possesses information relating to a pending case of a law enforcement agency, the custodian of records may withhold the information under section 552.108 if it demonstrates the information relates to the pending case, and this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the

information. You state the submitted witness statement was obtained during an internal administrative investigation conducted by the department, and was then provided to the El Paso Police Department (“police department”) for a criminal investigation conducted by the police department. You have submitted a letter from a police department official that states the submitted witness statement pertains to a pending criminal investigation, and the release of the information would interfere with that investigation. Based on these representations, we conclude the release of the submitted witness statement 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). Accordingly, the submitted witness statement may be withheld under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/cc

Ref: ID# 333151

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.