



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 18, 2009

Mr. Brett Norbraten  
General Counsel  
Department of Aging and Disability Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2009-06742

Dear Mr. Norbraten:

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# 344388 (DADS #2009SOLEG0044 and 2009SOLEG0045).

The Department of Aging and Disability Services (the "department") received two requests from the same requestor for the names and employment applications of eleven department employees involved in a specified incident and the reasons for termination of three of the employees at issue. You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we must address the department's obligations under section 552.301 of the Government Code. Subsections (a) and (b) of section 552.301 require a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th

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<sup>1</sup>We 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.

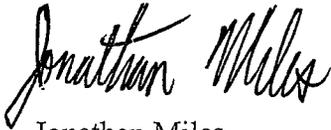
business day after the date of receiving the written request.” Gov’t Code § 552.301(a), (b). While you raised section 552.108 within the ten-business-day time period as required by subsection 552.301(b), you did not raise sections 552.103, 552.117, 552.130, and 552.147 within the ten-business-day deadline. Section 552.103 is a discretionary exception that protects a governmental body’s interests and may be waived by a governmental body’s failure to comply with the procedural requirements of the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas, no pet.) (governmental body may waive section 552.103). Thus, because you have failed to comply with the procedural requirements of section 552.301, the department has waived its claim under section 552.103. Therefore, the department may not withhold any of the submitted information under section 552.103 of the Government Code. However, mandatory exceptions to disclosure cannot be waived by a governmental body. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 574 at 3 n.4 (2001) (mandatory exceptions). Because sections 552.117, 552.130, and 552.147 are mandatory exceptions, we will consider your arguments under these exceptions, as well as your claim under 552.108.

Section 552.108(a)(1) of the Government Code exempts 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform this office that five of the named employees are “targets of interest” in an ongoing criminal investigation. Further, you have provided an affidavit from the Corpus Christi Police Department, which is conducting the criminal investigation, objecting to the release of the information at issue because it pertains to the criminal investigation. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Based on this representation and our review, 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 344388

Enc. Submitted documents

c: Requestor  
(w/o enclosures)