



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2009

Ms. Jessica Krizek
Smith County Civil Attorney &
Assistant Criminal District Attorney
Smith County
100 North Broadway, 4th Floor
Tyler, Texas 75702

OR2009-09700

Dear Ms. Krizek:

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# 348926.

The Smith County District Attorney's Office (the "district attorney") received a request for information pertaining to a specified criminal prosecution. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

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." *Id.* § 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal prosecution. While you indicate that this case has already gone to trial and a conviction was obtained, you explain that the case was on appeal on the date the district attorney received the request for information. Based upon these representations, we conclude that release of the information at issue 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, we conclude that section 552.108(a)(1) of the Government Code is applicable to the submitted information.

We note the requestor argues the district attorney has an obligation to disclose the information to him, as defense counsel, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and, thus, the district attorney may not withhold the submitted information under section 552.108. In *Brady*, the Supreme Court held the prosecution is required to provide the defense with all potentially exculpatory evidence. 373 U.S. at 87. However, we note *Brady* addresses prosecutorial requirements and does not affect the requirements outlined in the Public Information Act. Accordingly, based upon the district attorney's representations, we conclude the district attorney may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 348926

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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