



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 11, 2009

Ms. Laura Garza Jimenez  
Nueces County Attorney  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2009-11162

Dear Ms. Garza Jimenez:

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# 353412.

The Nueces County Sheriff's Department (the "sheriff") received a request for records of all disciplinary actions and investigations of sheriff's deputies and correctional officers within a given time period. You claim that the submitted 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.

Initially, we note that the submitted information consists of completed investigations, which are subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information pertains to investigations conducted by the sheriff into officers' conduct and is expressly public under section 552.022(a)(1). Therefore, the sheriff must release this information unless it is confidential under other law or is excepted from disclosure under section 552.108. Although you claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code, this section is a discretionary exception that a governmental body may waive. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information expressly confidential for purposes of section 552.022. However, we will address the applicability of section 552.108 to the submitted information.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The information you seek to withhold under section 552.108 consists of fourteen memoranda related to administrative investigations into several different employees. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App. – El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You argue, however, that the submitted information is directly related to pending criminal cases against two of the employees for tampering with government records. Upon review, we agree that section 552.108(a)(1) is applicable to a portion of the submitted information. *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). The sheriff may withhold the information we have marked in blue under section 552.108(a)(1). However, we note that the remaining five memoranda do not pertain to the criminal charge or either officer. You have failed to explain how the release of these memoranda would interfere with the detection, investigation, or prosecution of crime. Accordingly, these memoranda may not be withheld under section 552.108. As you raise no further exceptions against disclosure, the remaining information must be released.

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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a large, sweeping flourish extending to the right.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/eeg

Ref: ID# 353412

Enc. Submitted documents

c: Requestor  
(w/o enclosures)