



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2009

Ms. Melanie Barton
Assistant District Attorney
Dallas County District Attorney's Office, Civil Division
Administration Building, 5th Floor
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2009-18030

Dear Ms. Barton:

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# 364989.

The Dallas County Auditor (the "auditor") received a request for "[a]ny and all reports issued for each five constable precincts from 2002 to present." You state most of the requested information has been released, but claim the submitted information is either not responsive to the request, or it is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your comment that the submitted information may not be responsive to the request for "reports" because it is a "communication" and not a "report." A governmental body is required to make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). The submitted memo appears to relate to the request for "reports." Thus, based on our review, we find the auditor has made a good-faith effort to relate the request for information to the submitted information; accordingly, we will address your arguments against disclosure of this 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). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. The auditor is not a law enforcement agency. This office has determined, however, where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *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). Where a non-law enforcement agency has custody of information relating to a pending case of a law enforcement agency, the agency having custody of the information may withhold the information under section 552.108 if the agency demonstrates the information relates to the pending case and provides this office with a representation from the law enforcement entity that the law enforcement agency wishes to withhold the information.

You explain the Dallas County District Attorney’s Office objects to the release of the requested information because it relates to an active investigation and pending prosecution. Based on your representations, we find you have demonstrated release of the information would interfere with the ongoing investigation and prosecution; therefore, we agree the auditor may withhold the requested information from disclosure under section 552.108(a)(1).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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/cc

¹As our ruling is dispositive, we do not address your other arguments to withhold this information.

Ref: ID# 364989

Enc. Submitted documents

cc: Requestor
(w/o enclosures)