



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2010

Mr. David Daugherty
Assistant County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-05435

Dear Mr. Daugherty:

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#377524 (C.A. File No. 10GEN0351).

The Harris County Constable's Office Precinct Four (the "constable") received a request for all files, documents, and interoffice correspondence relating to an administrative investigation and termination of an employee. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information contains documents filed with a court, which are expressly public under section 552.022(a)(17) of the Government Code. *See* Gov't Code 552.022(a)(17). Such information must be released unless it is expressly confidential under "other law." *Id.* You claim the court-filed documents are excepted from disclosure under section 552.108(a)(1) of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the constable may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code.

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: (1) 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) 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108(a)(1) is not applicable to records of an

internal affairs investigation that is purely administrative in nature and did not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer); *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). You state that the information at issue relates to a pending criminal investigation. You submit documentation demonstrating that the information at issue has already been turned over to the Harris County District Attorney's Office for a determination of a criminal offense. Based on your representations and our review, we conclude that section 552.108(a)(1) is applicable to the remaining information.

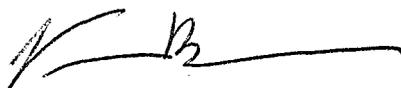
Section 552.108 of the Government Code does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, the constable must release the types of basic information listed in *Houston Chronicle Publishing Company v. City 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). With the exception of basic information, the constable may withhold the remaining information pursuant to section 552.108 of the Government Code.

In summary, with the exception of basic information and the court-filed documents, the constable may withhold the submitted information under section 552.108 of the Government Code. The basic information and the court-filed documents 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#377524

Enc. Submitted documents

c: Requestor
(w/o enclosures)