



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2010

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2010-06793

Dear Ms. Valkavich:

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# 379246 (COSA File Nos. 10-0289 and 10-0311).

The City of San Antonio (the "city") received two requests from two requestors. The first request was for letters of termination of any city building inspectors since October 2009, and the second request was for resignations in lieu of termination submitted by any city building inspectors and photographs of such inspectors, as well as all records generated in response to a specified code violation inspection. You state information responsive to the second request has been or will be released. 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.

Initially, you indicate that a portion of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-03265 (2010). In that decision, we ruled that the information at issue was excepted from disclosure under section 552.108 of the Government Code. To the extent any portion of the submitted information was ruled upon in Open Records Letter No. 2010-3265, as we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the city may continue to rely on that ruling as a previous determination and

continue to treat any previously ruled upon information in accordance with that prior ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address your arguments against disclosure.

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[.]” *Id.* § 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). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. You state that the remaining information consists of investigations conducted by the city’s Office of Municipal Integrity (“OMI”). Section 552.108 is generally not applicable to records of 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) (addressing statutory predecessor to section 552.108). You explain, however, that these administrative investigations are part of an active criminal investigation being conducted by the San Antonio Police Department. You assert that release of the remaining information would interfere with the criminal investigation. Based upon your representations and our review, we conclude the release of the remaining 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the city may continue to rely on Open Records Letter No. 2010-03265 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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.

¹As our ruling is dispositive of this information, we need not address your argument against its disclosure.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 379246

Enc. Submitted documents

c: Requestors
(w/o enclosures)