



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2010

Ms. Mary Salluce
Open Government Attorney
Texas Department of Family & Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2010-09735

Dear Ms. Salluce:

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# 385048.

The Texas Department of Family and Protective Services (the "department") received a request for the personnel file of a named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Section 552.108(a) of the Government Code excepts from required public 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

¹Although you also raise section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

with the detection, investigation, or prosecution of crime[.]” *Id.* § 522.108(a)(1). Generally, a governmental body claiming section 52.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 522.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 52.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 52.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You have provided documentation demonstrating that the Harris County District Attorney’s office objects to the release of the submitted information, as the information relates to a pending criminal prosecution. Based on the submitted representations, we agree release of the submitted 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 department may withhold the submitted information under section 52.108(a)(1) of the Government Code. We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov’t Code § 552.007.

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/tp

Ref: ID# 385048

Enc. Submitted documents

c: Requestor
(w/o enclosures)