



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2010

Mr. David A. Mendoza
Assistant District Attorney
County of Hays
110 East Martin Luther King
San Marcos, Texas 78666

OR2010-16773

Dear Mr. Mendoza:

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# 399129.

The Hays County Sheriff's Office (the "sheriff") received two requests from the same requestor for: (1) policy regarding moonlighting by sheriff deputies; (2) written permissions by the sheriff allowing particular deputies to moonlight for a specified business; (3) all logs regarding a specified incident; and (4) all written reports pertaining to the specified incident. 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, we note that you have only submitted information responsive to the fourth category of the request. To the extent any information responsive to the remaining categories of the requested information existed on the date the sheriff received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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] 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 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);

see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You state that the requested information pertains to a pending criminal case. Based on your representation and our review, we conclude that the 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

You acknowledge section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Open Records Decision No. 127 (1976)* (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic information, which you state has been released, the sheriff may withhold the submitted 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.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 399129

Enc. Submitted documents

cc: Requestor
(w/o enclosures)