



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2010

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

OR2010-18339

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# 403201 (C. A. File NO 10GEN2280).

The Harris County Tax Assessor Collector/Voter Registrar's Office (the "registrar") received two requests from the same requestor for (1) information relating to the "soonest of the 'last day to register' and 'beginning of EVPA' data" and (2) "a mutually exclusive and exhaustive account of applications received as of the last day to register relative to the registrations that will be active and effective by Election Day." You state the registrar does not have information responsive to the second request.¹ You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the Public Information Coordinator of the Office of the Attorney General (the "OAG"). See Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note it appears the registrar previously released the submitted information to the requestor pursuant to a different request for information. Section 552.007 of the

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision Nos. 518 at 3 (1989), 400 at 2 (1983). Accordingly, if the registrar has previously released the submitted information to the requestor, then the registrar may not now withhold this information unless its release is expressly prohibited by law. Sections 552.103 and 552.108 of the Government Code are discretionary exceptions to disclosure under the Act and do not constitute law that makes information confidential or expressly prohibits its release for purposes of section 552.007. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Therefore, if the registrar has previously released the submitted information, then, pursuant to section 552.007, the registrar may not withhold the information under section 552.103 or 552.108, but instead must release it to the requestor. However, if the registrar has not previously released the submitted information, then we must address your arguments to withhold it under the Act.

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[.]” 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* Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information.

You state and submit an affidavit from an assistant district attorney of the Harris County District Attorney's Office confirming that the submitted information relates to a pending criminal investigation. The OAG also objects to the release of the information under section 552.108(a)(1) because it relates to a pending criminal investigation being conducted by the OAG's Criminal Investigations Division. Based on these representations, we conclude the release of this 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, if the

registrar has not previously released the submitted information, then the registrar may withhold the submitted information under section 552.108(a)(1).²

To conclude, if the registrar has previously released the submitted information, then the registrar must release it to the requestor pursuant to section 552.007 of the Government Code. If the registrar has not previously released the submitted information, then the registrar may withhold it 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/vb

Ref: ID# 403201

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²As we are able to resolve this matter section 552.108, we do not address your other argument to withhold this information.