



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2010

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

OR2010-18803

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# 405063 (C. A. File No 10GEN2371).

The Harris County Clerk's Office (the "county clerk") received a request for a specified "table out of the Count Clerks Votee Oracle database[.]" You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> 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).

The requestor has asked for a copy of this table "every 3 days." It is implicit in several provisions of the Act that the Act applies only to information already in existence. See *id.* §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 87 (1975), 452 at 2-3 (1986). Consequently, a governmental body is not required to comply with a standing request to supply information on a periodic basis as such information is prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987).

You assert the submitted information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) 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), .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 See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the county clerk may withhold the submitted information under section 552.108(a)(1).<sup>2</sup>

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.

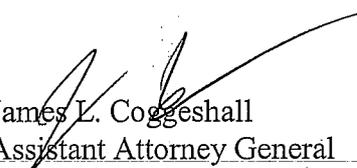
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

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

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# 405063

Enc. Submitted documents

c: Requestor  
(w/o enclosures)