ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2010

Ms. Vanessa A. Gonzalez
Allison, Bass & Associates, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2010-18830

Dear Ms. Gonzalez:

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# 403013.

The Titus County Clerk, County Auditor, and Justices of the Peace (collectively, the "county"), which your represent, received four requests from the same requestor for copies of all subpoenas from the Federal Bureau of Investigation (the "FBI") and/or the United States Attorney General received by the county in regards to a named judge from September 1, 2008 to the date of the request. 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.[1]

Initially, we note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, the county has been authorized to withhold the redacted information without seeking a ruling from this office. *Id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, this

[1]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.

information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the county should refrain from redacting any information that it submits to this office in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code §§ 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information protected by other statutes. You raise section 552.101 in conjunction with section 1510(b) of title 18 of the United States Code. Section 1510(b) provides in relevant part:

> (b)(1) Whoever, being an officer of a *financial institution*, with the intent to obstruct a judicial proceeding, directly or indirectly notifies any other person about the existence or contents of a subpoena for records of that financial institution, or information that has been furnished in response to that subpoena, shall be fined under this title or imprisoned not more than 5 years, or both.
>
> (2) Whoever, being an officer of a *financial institution*, directly or indirectly notifies–
>
> > (A) a customer of that financial institution whose records are sought by a subpoena for records; or
> >
> > (B) any other person named in that subpoena;
>
> about the existence or contents of that subpoena or information that has been furnished in response to that subpoena, shall be fined under this title or imprisoned not more than one year, or both.
>
> (3) As used in this subsection—
>
> > (A) the term "an officer of a financial institution" means an officer, director, partner, employee, agent, or attorney of or for a financial institution[.]

18 U.S.C. § 1510(b)(1)-(3)(A) (emphasis added). For purposes of section 1510(b), a financial institution is defined as follows:

> (1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);

> (2) a credit union with accounts insured by the National Credit Union Share Insurance Fund;
>
> (3) a Federal home loan bank or a member, as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), of the Federal home loan bank system;
>
> (4) a System institution of the Farm Credit System, as defined in section 5.35(3) of the Farm Credit Act of 1971;
>
> (5) a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662);
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> (6) a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act;
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> (7) a Federal Reserve bank or a member bank of the Federal Reserve System;
>
> (8) an organization operating under section 25 or section 25(a) of the Federal Reserve Act;
>
> (9) a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978); or
>
> (10) a mortgage lending business (as defined in section 27 of this title) or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974.

Id. § 20. By its own terms, section 1510(b) prohibits the disclosure of certain information by officers of financial institutions. You do not explain how the county is an officer of a financial institution. Accordingly, we find the county has failed to demonstrate the applicability of section 1510(b) to the submitted information. Thus, the county may not withhold the submitted information under section 552.101 in conjunction with section 1510(b).

You also claim section 3420(b) of title 12 of the United States Code for the submitted information. Section 3420(b) of title 12 is also encompassed by section 552.101. Section 3420(b) provides in relevant part:

> (b)(1) [n]o officer, director, partner, employee, or shareholder of, or agent or attorney for, a *financial institution* shall, directly or indirectly, notify any person named in a grand jury subpoena served on such institution in connection with an investigation relating to a possible–

> (A) crime against any financial institution or supervisory agency or crime involving a violation of the Controlled Substance Act . . ., the Controlled Substances Import and Export Act . . ., section 1956 or 1957 of Title 18, sections 5313, 5316 and 5324 of Title 31, or section 6050I of Title 26; or
>
> (B) conspiracy to commit such a crime,
>
> about the existence or contents of such subpoena, or information that has been furnished to the grand jury in response to such subpoena.

12 U.S.C. § 3420(b)(1) (emphasis added). Section 3401(1) defines a financial institution for purposes of section 3420 as follows:

> any office of a bank, savings bank, card issuer as defined in section 1602(n) of Title 15, industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands[.]

Id. § 3401(1). As with section 1510(b) of title 18 of the United States Code, section 3420(b) only applies to an officer, director, partner, employee, or shareholder of, or agent or attorney for, a financial institution. You do not explain how the county is an officer, director, partner, employee, or shareholder of, or agent or attorney for, a financial institution for purposes of section 3420(b). Accordingly, we find the county has failed to demonstrate the applicability of section 3420(b) to the submitted information. Thus, the county may not withhold the submitted information under section 552.101 in conjunction with section 3420(b).

We now address your claim under section 552.108 of the Government Code. Section 552.108 provides in relevant part the following:

> (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:
>
> > (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(b)(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. Open Records

Decision Nos. 474 at 4-5 (1987), 372 (1983). Where an agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a different law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration the information relates to the pending case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information. In this instance, we understand the information at issue relates to an ongoing criminal investigation being conducted by the FBI. Thus, this office requires a representation from the FBI explaining how release of the information at issue will interfere with its pending case. This office has not received any such representation. Accordingly, we conclude the county may not withhold the submitted information under section 552.108(b)(1). As no other exceptions to disclosure are raised, the county must release the submitted information.

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,

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 403013

Enc. Submitted documents

c: Requestor
(w/o enclosures)