



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2011

Mr. Jeffrey T. Pender
Deputy General Counsel
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR2011-02655

Dear Mr. Pender:

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# 410106.

The Texas Department of Housing and Community Affairs (the "department") received two requests for information related to an investigation into allegations of misconduct by employees at the Webb County Community Action Agency (the "WCCAA"). You state you have provided the second requestor with portions of the information he requested. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108 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). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981).

¹We 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 those submitted to this office.

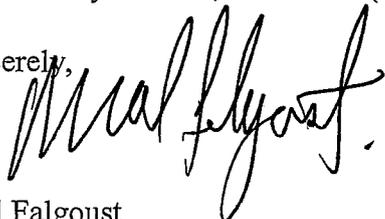
Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim section 552.108 protects records in its possession. If an administrative agency's investigation reveals possible criminal conduct the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. *See* Gov't Code 552.108(a)(1); Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 at 1, 474 (1987), 372 at 4 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to incident). Furthermore, where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides the attorney general with a determination that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information.

You state the requested information relates to possible criminal activity involving the WCCAA, which the department has reported to the Texas State Auditor's Office Special Investigations Unit, the U.S. Department of Energy's Office of Inspector General, and the Federal Bureau of Investigations for further investigation. You also have provided this office with a representation from the Webb County Attorney's Office stating it is conducting an ongoing criminal investigation into "alleged widespread fraud" involving the WCCAA and release of the information at issue would jeopardize its investigation. Based on these representations and our review, we conclude that release of the information at issue 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) (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, you may withhold the information at issue under section 552.108(a)(1) of the Government Code.

You ask this office to issue a previous determination that would permit the department to withhold the personally identifying information of individuals participating in the department's Weatherization Assistance Program under section 552.101 of the Government Code in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations without the necessity of requesting a decision from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a decision at this time. Accordingly, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 410106

Enc. Submitted documents

c: Requestors
(w/o enclosures)