



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2011

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio
Room 503, County Courthouse
El Paso, Texas 79901

OR2011-06936

Dear Ms. Lytle:

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# 421241.

The El Paso County Sheriff's Department and El Paso County (collectively, the "county") received a request for the internal affairs division disciplinary cards of two named individuals and information pertaining to a specified case number. You state you have released some of the requested information to the requestor. You state you do not have any information responsive to a portion of the request. 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.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 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 any proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983).

In this instance, you provide a letter from the Office of the District Attorney for the 34th Judicial District stating the submitted information constitutes evidence in a pending

prosecution, and that release of this information would interfere with the case. We note the information at issue includes a *Miranda* warning signed by the arrestee. Because a copy of this document, which we have marked, has been provided to the arrestee, we find its release will not interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Therefore, the county may not withhold the *Miranda* warning under section 552.108(a)(1). However, based on the representations and our review, we conclude that release of the remaining 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) (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, section 552.108(a)(1) is applicable to this information.

However, we note 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception the *Miranda* warning and basic information, the county may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/eb

¹As our ruling is dispositive, we need not address your remaining argument against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

Ref: ID# 421241

Enc. Submitted documents

cc: Requestor
(w/o enclosures)