



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2011

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

OR2011-08642

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# 421315.

The El Paso District Attorney's Office (the "district attorney") received a request for exhibits publicly introduced into evidence at a specified trial. You state you are releasing some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You have also notified a third party whose interests may be implicated by the request. *See Gov't Code* § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.¹ We have also received and considered comments from an attorney representing the interested third party.

Initially, we address your argument that some of the requested exhibits are not subject to release under the Act. This office has ruled that tangible physical items are not "information" as that term is contemplated under the Act. *See, e.g., Open Records Decision*

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 that submitted to this office.

No. 581 (1990). Thus, we find that any responsive tangible physical evidence that is maintained by the district attorney is not public information as that term is defined in section 552.002 of the Government Code. Consequently, we agree that the district attorney is not required to release the physical items introduced into evidence to the requestor under the Act. *See* Gov't Code §§ 552.002, .021.

Next, you inform us that not all of the submitted photographs were introduced and used at trial. Accordingly, the photographs not introduced into evidence at trial are not responsive to the present request for information. The district attorney need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, as you acknowledge, the responsive information is subject to section 552.022 of the Government Code, which states, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Id. § 552.022(a)(1). The submitted information is part of a completed investigation. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation is expressly public unless it either is excepted from disclosure under section 552.108 of the Government Code or is expressly confidential under other law. Because information subject to section 552.022(a)(1) may be excepted under section 552.108 of the Government Code, we will address your argument under this exception. Additionally, because section 552.101 of the Government Code is other law for purposes of section 552.022, we will also consider your arguments under this exception.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the responsive information pertains to a concluded criminal investigation and prosecution that did not result in a conviction or deferred adjudication. Based on your representations and

our review, we agree section 552.108(a)(2) is applicable to the responsive information. Thus, the district attorney may withhold the information at issue under section 552.108(a)(2) of the Government Code.²

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 421315

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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210 North Campbell Street
El Paso, Texas 79901
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.