



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2011

Ms. Michele Tapia  
Assistant District Attorney  
Dallas County  
411 Elm Street, 5th Floor  
Dallas, Texas 75202

OR2011-11099

Dear Ms. Tapia:

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# 425957.

Dallas County (the "county") received a request for investigative reports pertaining to the county's investigation of deputy constables, the suspected deputy constables' identification photographs, and the suspected deputy constables' personnel files.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.116, 551.117, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note you have not submitted information responsive to the portion of the request seeking the suspected deputy constables' identification photographs. To the extent the county maintains information responsive to this portion of the request that existed on the

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<sup>1</sup>You state the county sought and received clarification of the instant request from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</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.

date the request was received, we assume you have released it. If you have not released any such information, you must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., H.B. 2947, §§ 1, 2 (to be codified as amendments to Gov't Code § 552.116). You state a portion of the submitted information consists of audit working papers used by the county in conducting an audit of all the county constable precincts. You further state the audit is being conducted by the county auditor pursuant to its authority under sections 112.006, 115.001, 115.002, and 115.0035 of the Local Government Code. *See* Local Gov't Code §§ 112.006, 115.001, .002, .0035 (relating to the duties of the county auditor). You inform us there is no final audit report as of the date of

this request. Based on your representations and our review, we agree the information at issue consists of audit working papers as defined in section 552.116(b)(2). Accordingly, the county may withhold the information we have marked pursuant to section 552.116 of the Government Code.<sup>3</sup>

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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You state the remaining information relates to a pending criminal investigation. Based on your representation and our review, we conclude the 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). Accordingly, you may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>4</sup>

In summary, the county may withhold the information we have marked pursuant to section 552.116 of the Government Code. The county may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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), or call the Office of the Attorney General’s Open Government Hotline, toll free,

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

<sup>4</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eb

Ref: ID# 425957

Enc. Submitted documents

c: Requestor  
(w/o enclosures)