



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2011

Mr. Ryan S. Henry
Denton, Navarro, Rocha, & Bernal
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2011-14151

Dear Mr. Henry:

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# 431609.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district"), which you represent, received three requests for specified subpoenas.¹ You claim that 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. We have also considered comments submitted by the United States Department of Justice (the "DOJ") and an attorney for the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's attorney's assertion that the district did not comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine

¹You state, and provide documentation showing, the district sought and received clarification of the request. *See* Gov't Code § 522.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

whether information is excepted from public disclosure under the Act. *See id.* § 552.301(a). The requestor's attorney states the copy of the written comments sent to the requestor did not include exhibits that provided the substance of the district's arguments under sections 552.103 and 552.108. The requestor's attorney argues that without the exhibits, the copy of the written comments sent to the requestor was not sufficient and omits some of the arguments the district has made to this office. Section 552.301(e)(1)(A) requires the governmental body to submit to this office "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld[.]" *Id.* § 552.301(e)(1)(A). Section 552.301(e-1) provides as follows:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Id. § 552.301(e-1). The district sent the requestor a copy of its brief to this office requesting a decision and stating the exceptions that apply. *See id.* § 552.301(d). The district states in its brief that support for its argument are included in the exhibits. However, the district did not send the requestor a copy of the exhibits. We find the requestor's receipt of the district's August 9, 2011 brief, which provides the substance of the district's arguments under section 552.103, satisfies the statutory requirement under section 552.301(e-1). Thus, the district did not fail to comply with the procedural requirements set out in section 552.301(e-1) with respect to section 552.103. However, the August 9, 2011 brief omits the discussion of the district's section 552.108 claim. We find the exhibits constitute the substance of the district's arguments under section 552.108 and do not disclose or contain the substance of the information requested. Therefore, we conclude the district failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code with respect to section 552.108.

Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). We note the DOJ asserts a law enforcement interest in the information at issue. Therefore, we will determine whether the district may withhold the submitted information on behalf of the DOJ under section 552.108.

Section 552.108 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The DOJ objects to release of the submitted information because its release would interfere with a pending criminal investigation. Based upon this representation, we conclude the 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). Accordingly, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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/akg

Ref: ID# 431609

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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