



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2011

Ms. Jessica L. Saldivar  
Assistant General Counsel  
Houston Community College  
P.O. Box 667517  
Houston, Texas 77266-7517

OR2011-16552

Dear Ms. Saldivar:

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# 435902.

Houston Community College (the “college”) received a request for records related to the vendors who bid or submitted proposals to be the college’s Job Order Contractor in 2003, including proposals, cover letters, and all related documents. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See* Gov’t Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we must address the college’s obligations under section 552.301 of the Government Code. You acknowledge the college did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(a)-(b). We note the college also failed to comply with its fifteen-business-

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<sup>1</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.

day deadline under section 552.301(e) of the Government Code. *See id.* § 552.301(e). Pursuant to section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the submitted information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). In general, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

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* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 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). You state the United States Department of Education Office of Inspector General ("DOE-OIG") asserts a law enforcement interest in the submitted information. Therefore, we will consider whether the college may withhold the submitted information on behalf of the DOE-OIG under section 552.108.

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). Generally, a governmental body claiming section 552.108(a)(1) 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 any 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 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 this office with a representation from the law enforcement agency that it wishes to have the information withheld and a demonstration the information relates to the pending case.

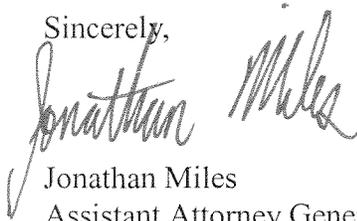
You state, and provide documentation showing, the DOE-OIG objects to the release of the submitted information because its release would interfere with an open criminal investigation being conducted by the DOE-OIG. We understand the DOE-OIG is a law enforcement agency with the power to investigate and prosecute crimes. *See* 5 U.S.C. app. 3 §§ 4, 6 (1978). Based on these representations and our review, we conclude release of the submitted

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, the college may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the DOE-OIG.

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, 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 435902

Enc. Submitted documents

c: Requestor  
(w/o enclosures)