



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2011

Mr. Bill Delmore
Assistant District Attorney
9th Judicial District
207 West Phillips, 2nd Floor
Conroe, Texas 77301

OR2011-16660

Dear Mr. Delmore:

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# 435860.

The Montgomery County District Attorney's Office (the "district attorney") received a request for copies of text messages and any pictures pertaining to a specified case involving a named Houston Police Department officer. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) 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[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted information pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable

and conclude the district attorney may withhold the submitted information from disclosure based on section 552.108(a)(2).

We note the requestor is with the Houston Police Department (the "department"), and has requested this information for use in an internal affairs investigation of the named officer. Accordingly, the district attorney has the discretion to release the information pursuant to an intergovernmental transfer. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinion Nos. DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

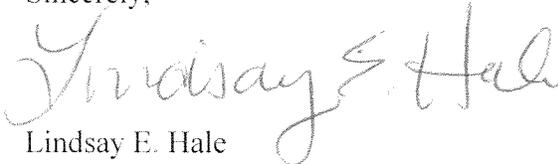
Section 552.108 of the Government Code is not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Thus, pursuant to the intergovernmental transfer doctrine, the district attorney has the discretion to release the submitted information that is subject to section 552.108 to the requestor. However, should the district attorney decline to exercise that discretion, it must nonetheless adhere to this decision regarding the applicability of the claimed exception to the requested information. Furthermore, release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.,* Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the district attorney does not waive its interests in withholding this information by exercising its discretion under the interagency transfer doctrine.

In summary, the district attorney may withhold the submitted information under subsection 552.108(a)(2) of the Government Code. However, the district attorney may exercise its discretion to release the submitted information to the department based on the doctrine of intergovernmental transfer.

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,

A handwritten signature in cursive script that reads "Lindsay E. Hale".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 435860

Enc. Submitted documents

c: Requestor
(w/o enclosures)