



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2011

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

OR2011-17164

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# 436736.

The El Paso County District Attorney’s Office (the “district attorney”) received a request from two requestors for communications it received regarding a named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from one of the requestors. *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 assertion that the Office of the Attorney General (the “OAG”) is not the proper entity to issue an open records ruling in this instance. The requestor states the OAG has a conflict of interest because some of the requested information consists of communications between the OAG and the district attorney. We note this office

¹Although you also initially raised sections 552.101, 552.103, 552.107, and 552.111 of the Government Code as exceptions to disclosure, you did not submit to this office written comments stating the reasons why these sections would allow the information to be withheld; we therefore assume you no longer assert these exceptions. *See* Gov’t Code §§ 552.301, .302.

is statutorily bound to issue an open records decision within forty-five business days of receiving a request for a ruling from a governmental body. *See* Gov't Code § 552.306(a) (requiring OAG to “promptly render a decision requested under [the Act], consistent with the standards of due process, determining whether the requested information is within one of the exceptions of [the Act]”); *see also* *Arlington Ind. Sch. Dist. v. Tex. Atty. Gen.*, 37 S.W.3d 152 at 157 (2001) (noting Act requires OAG to determine what information is excepted from disclosure). The district attorney received a request for information it wished to withhold from public disclosure and, through the El Paso County Attorney's Office, timely requested a decision from the OAG about whether the responsive information is subject to an exception under the Act. *See* Gov't Code § 552.301. Therefore, pursuant to the Act, this office must issue a ruling on whether the information at issue may be withheld under the Act.

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 ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also* *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a current criminal investigation and release of the information at issue would interfere with the investigation. Based on this representation and our review, we conclude section 552.108(a)(1) is generally applicable to the submitted information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14thDist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88. Therefore, except for basic information, the district attorney 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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a horizontal line extending to the right from the end of the name.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 436736

Enc. Submitted documents

c: Requestor
(w/o enclosures)