



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 22, 2012

Ms. Cheryl Elliott Thornton  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2012-04253

Dear Ms. Thornton:

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# 448525 (Harris County File No. 12PIA0014).

The Harris County Constable's Office, Precinct Five (the "constable's office") received a request for the personnel files of three named officers. You claim the submitted information is excepted from disclosure under sections 552.102, 552.111, 552.117, and 552.1175 of the Government Code. You have also submitted an affidavit from the Harris County District Attorney's office ("district attorney's office"), in which the district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. *See* Gov't Code § 552.304 (providing interested party may submit written comments stating why information should or should not be released). We have considered all of the submitted arguments and reviewed the submitted information.

Initially, we note the requestor specifically excludes home addresses, home telephone numbers, social security numbers, family member information, driver's license numbers, license plate numbers, and other personally identifying information from his request. Accordingly, such information is not responsive to the request. The submitted information also includes payroll information related to an individual who is not one of the named officers. This payroll information, which we have marked, is also not responsive to the present request. This decision does not address the public availability of non-responsive information and such information need not be released in response to the present request.

Next, we note some of the submitted documents are subject to section 552.022 of the Government Code. Section 552.022(a) provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body; except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted documents include completed training reports and evaluations. The constable's office must release this information under section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. You raise sections 552.102, 552.111, 552.117, and 552.1175 as exceptions to disclosure. The district attorney's office raises section 552.108. Section 552.111 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), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 subject to waiver). Accordingly, the constable's office may not withhold the training reports and evaluations on the basis of section 552.111. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will consider the applicability of this exception to the completed reports and evaluations, as well as to the remaining information. Further, as sections 552.102, 552.117, and 552.1175 make information confidential under the Act we will consider the applicability of these sections to the information subject to section 552.022(a)(1) and the remaining information. We will also consider the applicability of section 552.111 to the information not subject to section 552.022(a)(1).

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 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).

You provide an affidavit from an assistant district attorney with the district attorney's office stating the submitted information is related to an ongoing criminal prosecution and the district attorney's office objects to release of the submitted information. The district attorney's office states the named officers are directly involved in the ongoing prosecution

and release of the submitted information would interfere with the pending criminal prosecution. Based on these representations and our review, we conclude the release of the responsive 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); *see also* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct). Accordingly, the constable's office may withhold the responsive information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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,



Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 448525

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.