



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2012

Mr. John A. Peralta
Assistant County Attorney
Liberty County Attorney's Office
P.O. Box 9127
Liberty County, Texas 77575

OR2012-04344

Dear Mr. Peralta:

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# 448417.

The Liberty County Sheriff's Office (the "sheriff's office") received a request for any and all records pertaining to disciplinary actions taken against and the terminations of two named former deputy sheriffs. You state the sheriff's office will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You have also submitted a statement from the Liberty 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.

We note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022 provides in part:

(a) [T]he 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 information includes completed investigations and evaluations. The sheriff'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. Although you raise section 552.103 of the Government Code for this information, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37 (providing for "confidentiality" of information under specified exceptions); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the sheriff's office may not withhold the marked investigations and evaluations on the basis of section 552.103. However, the district attorney's office raises section 552.108. 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 marked investigations and evaluations, as well as to the remaining information. We will also consider the applicability of section 552.103 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 state the submitted information pertains to the pending prosecutions of the named former deputy sheriffs. You provide a statement from the assistant county district attorney with the district attorney's office asserting the law enforcement exception for the submitted information. Based on these representations and our review, we conclude the 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); *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 sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

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.

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

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 "Michelle R. Garza", with a long, sweeping horizontal line extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 448417

Enc. Submitted documents

c: Requestor
(w/o enclosures)