ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2012

Mr. Ronald C. Griffin
Shafer, Davis, O'Leary & Stoker, P.C.
P.O. Drawer 1552
Odessa, Texas 79760-1552

OR2012-06286

Dear Mr. Griffin:

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# 452101.

Ector County (the "county"), which you represent, received two requests for (1) all hostile work environment claims filed by county employees from January 1, 2011 to the date of the first request, and (2) all documents regarding complaints from employees in the Ector County Attorney's Office from January 1, 2012 to the date of the second request.[1] You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state a portion of the submitted information is not responsive to the requests. This ruling does not address the public availability of that information, and the county need not release any non-responsive information.

Next, we must address the county's obligations under the Act with respect to the requests. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Gov't Code § 552.301. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested

[1]We will refer to the request dated February 13, 2012 as the "first request" and the request dated March 7, 2012 as the "second request."

information by the tenth business day after receiving the request. *Id.* § 552.301(b). You state the county received the first request for information on February 13, 2012. Although you timely submitted your initial request for a decision to this office, you did not raise section 552.108 of the Government Code until March 27, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, with respect to your claim under section 552.108, the county failed to comply with the procedural requirements mandated by section 552.301(b) for the information responsive to the first request.

Additionally, you state the second request for information, for which additional information was submitted, was received on March 7, 2012. Thus, the county's ten-business-day deadline to request an opinion was March 21, 2012. However, you did not request a decision from this office until March 27, 2012. *See id.* § 552.308. Thus, the county also failed to comply with the procedural requirements mandated by section 552.301(b) with respect to the second request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code, this is a discretionary exception that protects only 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). However, the interests of a third party under section 552.108 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold information under statutory predecessor to section 552.108 can provide compelling reason to overcome presumption of openness). You state the Office of the Attorney General (the "OAG") objects to the release of the responsive information. Therefore, we will consider the applicability of section 552.108 to the responsive information on behalf of the OAG for both requests. In addition, you claim section 552.101 of the Government Code. Because section 552.101 can provide a compelling reason for non-disclosure, we will also consider the applicability of this exception to the responsive information.

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). 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). Section 552.108 applies to information held by a "law enforcement agency." However, section 552.108 may be invoked by the 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 relating to a pending case of a law enforcement agency, the custodian of records may withhold the information under section 552.108 if (1) it demonstrates the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information.

You state the OAG has informed you the responsive information relates to an ongoing criminal investigation and, therefore, the OAG has requested the responsive information not be released. Based on the OAG's objections and our review, we conclude the county may withhold the responsive information under section 552.108(a)(1) on behalf of the OAG.[2] *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).

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,

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

---

[2]As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 452101

Enc. Submitted documents

c: Requestor
(w/o enclosures)