



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2012

Mr. Matthew M. Kendall
Assistant County and District Attorney
Cameron County District Attorney
964 East Harrison Street
Brownsville, Texas 78520

OR2012-07517

Dear Mr. Kendall:

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# 454183.

The Cameron County District Attorney’s Office (the “district attorney”) received a request for a pre-trial diversion contract between a named individual and the district attorney. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a receipt for a fee payment to the district attorney subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides for the required public disclosure of “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a). Although you raise sections 552.103 and 552.108 of the Government Code for this information, these are discretionary exceptions that may be waived and do not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions

¹Although you raise section 552.101 of the Government Code in conjunction with sections 552.103 and 552.108 of the Government Code, we note section 552.101 does not encompass other exceptions in the Act.

generally), 663 at 5 (1999) (waiver of discretionary exceptions), 473 (1987) (section 552.103 may be waived), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the receipt, which we have marked, may not be withheld under either section 552.103 or section 552.108 of the Government Code. As you raise no further exceptions to disclosure of the receipt, it must be released.

You seek to withhold the remaining information under section 552.108 of the Government Code. Section 552.108 provides, in pertinent part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) 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[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information at issue is related to a pending prosecution. You state the defendant in this case entered into a pre-trial diversion agreement with the district attorney and defendants enrolled in the program are subject to ongoing prosecution until they complete the program successfully. Thus, we understand you to raise section 552.108(a)(1).

Based on your representations and our review, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of crime. See Attorney General Opinion GA-0114 at 2 (2003) (explaining the concept of “pre-trial diversion” and “pre-trial intervention” as differing from “deferred adjudication”); see also *Houston 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). Thus, we find section 552.108(a)(1) is applicable to this information. Therefore, with the exception of the receipt, which must be released, the district attorney may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/akg

Ref: ID# 454183

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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