



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2012

Mr. Marc Allen Connelly
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2012-08683

Dear Mr. Connelly:

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# 455693 (DSHS File: 20139/2012).

The Texas Department of State Health Services (the “department”) received a request for all information regarding complaint number 1058-12-0198. You inform us that some of the requested information has been or will be made available to the requestor. You claim some of 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, we note a portion of the submitted information, which we have marked, is not responsive to the request because it was created after the request was received. This decision does not address the public availability of the non-responsive information, and that information need not be released in response to the present request.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information

if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You have marked the responsive information the department seeks to withhold under section 552.108. You inform us that this information pertains to an active criminal investigation being conducted by the Federal Bureau of Investigation (the "FBI"). You have provided us with a letter from the FBI requesting that the department not release the identity of the FBI's informant. Based on these representations and our review, we conclude the release of the identifying information we have marked 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 per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold this information under section 552.108(a)(1) of the Government Code.¹ However, in this instance, the FBI does not seek to withhold any portion of the remaining information at issue. Therefore, none of the remaining responsive information may be withheld under section 552.108(a)(1). As you raise no other exceptions to disclosure of this information, the department must release it.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

¹As our ruling for this information is dispositive, we need not address your remaining argument against its release.

Ref: ID# 455693

Enc. Submitted documents

c: Requestor
(w/o enclosures)