



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2012

Mr. Gerard A. Calderon
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205

OR2012-08701

Dear Mr. Calderon:

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# 455639.

The Bexar County District Attorney's Office (the "district attorney's office") received a request for audits conducted by or submitted to Bexar County (the "county") regarding any of the four county constables during a specified time period. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

In a letter to this office dated April 9, 2012, the district attorney's office states the county has released the information in Exhibit C to a member of the public who requested the information under the Act and the district attorney's office no longer seeks to withhold that information from required public disclosure. Thus, it appears the district attorney's office has released the information in Exhibit C. *See* Open Records Decision No. 664 (2000) (if

¹Although you also raised section 552.101 of the Government Code as an exception to disclosure, you did not submit to this office written comments stating the reasons why this section would except any of this information, nor have you identified any information you seek to withhold under this exception; we therefore assume you no longer assert section 552.101. *See* Gov't Code §§ 552.301, .302.

governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Section 552.108 is a discretionary exception under the Act and does not make information confidential under law or expressly prohibit its release for purposes of section 552.007. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the district attorney's office may not now withhold the information in Exhibit C under section 552.108 of the Government Code but must release it.

Next, we address your contention the information submitted as Exhibit D is not subject to the Act. The Act is applicable to "public information." Gov't Code § 552.021. Section 552.002 of the Act provides "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a).

You state Exhibit D "is a draft [report] which has not been used in connection with transacting official business and therefore [is] not public." We note, however, Exhibit D consists of a draft audit report that was assembled by the county's auditor's office. You also inform us that the auditor's office maintains this information. Accordingly, we find the county collected, assembled, or maintains Exhibit D in connection with the transaction of official county business. Therefore, this information is subject to the Act and must be released unless an exception to disclosure is shown to be applicable.

Section 552.108(a)(1) 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[.]" *See id.* § 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). You state Exhibit D pertains to a pending criminal investigation. Based on your representation and our review, we conclude the release of this 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). Therefore, we conclude the district attorney's office may withhold Exhibit D under section 552.108(a)(1) of the Government Code. Exhibit C must be released.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 455639

Enc. Submitted documents

c: Requestor
(w/o enclosures)