



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2012

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, 1st floor
Conroe, Texas 77301

OR2012-15496

Dear Mr. Walker:

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# 466333.

Montgomery County and the Montgomery County Precinct 3 Commissioner's Office (collectively, the "county") received a request for a specified letter. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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, and provide correspondence from the United States Attorney's Office (the "U.S. Attorney's Office") stating, the submitted information relates to a pending criminal investigation by the U.S. Attorney's Office and release of the information could interfere with that investigation. Based on this representation and our review, we conclude that release of the information you 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 n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the county may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the U.S. Attorney's Office.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.

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/som

Ref: ID# 466333

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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