



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2012

Mr. Charles Galindo Jr.
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2012-16588

Dear Mr. Galindo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 469501 (PIR No. 12-34119).

The Office of the Attorney General (the "OAG") received a request for a police report and witness statements relating to the requestor's crime victim's compensation claim. The OAG asserts the information is excepted from disclosure under section 552.108 of the Government Code. We have considered the OAG's claimed exception and have reviewed the submitted sample of information.¹ We have also received and considered the requestor's comments. See Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Section 552.108(a)(1) excepts from disclosure information 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.

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Id. § 552.108(a)(1). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Where a non-law enforcement agency is in the custody of 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 entity that it wishes to withhold the information.

The OAG received the report from the Denton Police Department (the “department”) and thus informed it of the request. The department asks the OAG to withhold the information from disclosure so as not to interfere with an ongoing criminal investigation. The requestor disputes the department’s contention that the case is ongoing and instead argues the case is inactive and asserts the department has no “desire to further investigate the crime.” The status of the investigation is a question of fact. This office cannot resolve factual disputes in the decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue is not resolvable as a matter of law, this office must rely on the facts the governmental body alleges in requesting a decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, we must accept the department’s representation that the criminal investigation is ongoing. Next, the requestor questions how release of the report would interfere with the department’s investigation because he has already received a redacted copy of the incident report at issue, which he submitted to this office. Given these facts, this office asked for additional comments explaining how release of the entire report would interfere with the investigation given the requestor’s receipt of most of the report. *See* Gov’t Code § 552.303 (this office may require agency’s submission of additional information as necessary to render a decision). The department explains the University of North Texas Police Department released the redacted report without its knowledge and, consequently, such a release should not waive its section 552.108 assertion “for the rest of the file which includes numerous names and addresses of witnesses to this incident.” Upon review of all of the comments and the information at issue, we conclude the department has shown that release of only the redacted portions of the report will interfere with its ongoing criminal investigation and 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). Accordingly, pursuant to section 552.108(a)(1) of the Government Code, the OAG may withhold the portions of the report that were redacted prior to the release of the report to the requestor. The OAG must release the remainder of the report that the requestor has already received.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 469501

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Ms. Stephanie Berry
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City of Denton
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Denton, Texas 76201
(w/o enclosures)