ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2012

Mr. Michael A. Guevara
Counsel for the City of Bertram
Shotts, Treviño & Guevara, L.L.P.
1322 Hunter Ace Way
Cedar Park, Texas 78613

OR2012-17976

Dear Mr. Guevara:

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# 470363.

The City of Bertam (the "city") received a request for a specified audit and a specified letter. We understand the city has released the specified audit. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. Additionally, you state the requested information may implicate the interests of the Office of the Attorney General (the "OAG"). Accordingly, you notified the OAG of the request and of its right to submit comments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released). We have received comments from the OAG. We have considered submitted arguments 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). Where an agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a different law

enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration that the information relates to the pending case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information.

The OAG states it objects to the release of the information at issue under section 552.108(a)(1) because the information relates to a pending criminal investigation being conducted by the OAG's Law Enforcement Division, and its release would interfere with the pending investigation. Based upon this representation and our review, we conclude release of the information at issue 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). Accordingly, we conclude the city may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the OAG.

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,

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 470363

Enc. Submitted documents

c: Requestor
(w/o enclosures)