



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2012

Lt. David Hawley
Administration Division
Grayson County Sheriff's Office
200 South Crockett
Sherman, Texas 75090

OR2012-19223

Dear Lt. Hawley:

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# 473068.

The Grayson County Sheriff's Office (the "sheriff's office") received a request for all information related to a specified incident. The sheriff's office states it does not have some of the requested information.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the request was received. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) requires disclosure of "information that is also

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

contained in a public court record,” unless the information is expressly confidential under the Act or other law. Gov’t Code § 552.022(a)(17). In this instance, the submitted information includes court-filed documents. This information is expressly public under section 552.022(a)(17), and the sheriff’s office must release it unless it is confidential under the Act. You raise section 552.108 of the Government Code for this information. However, section 552.108 is a discretionary exception to disclosure that protects the governmental body’s interests and does not make information confidential under the Act. *See id.* § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the sheriff’s office may not withhold the court-filed documents we have marked under section 552.108 of the Government Code. However, we will consider the applicability of section 552.108 to the information not subject to section 552.022.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code 552.108(a)(1). Generally, 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 the submitted information relates to pending criminal investigations. We note the submitted information consists of documents used in an internal investigation. Section 552.108 generally is not applicable to purely administrative records that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 562 at 10 (1990). However, you state the submitted information relates to a criminal investigation that was pending with the Clay County Sheriff’s Office at the time of the request, and you state the Clay County Sheriff’s Office objects to the release of the submitted information. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of the remaining responsive 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); *see also* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). Therefore, you may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code on behalf of the Clay County Sheriff’s Office.

In summary, the sheriff’s office must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. The sheriff’s office may

withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 473068

Enc. Submitted documents

c: Requestor
(w/o enclosures)