



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 13, 2013

Ms. Kristen Pauling Doyle  
General Counsel  
Cancer Prevention and Research Institute of Texas  
P.O. Box 12097  
Austin, Texas 78711

OR2013-02512

Dear Ms. Doyle:

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# 479646 (CPRIT 2013-27, 2013-28, 2013-29, 2012-30).

The Cancer Prevention and Research Institute of Texas (the "institute") received a request for all correspondence to and from three named individuals and any other employee of the institute pertaining to three named entities and another named individual. You state the institute will provide some information to the requestor. 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.

We note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-17275 (2012). In that ruling, we noted the institute informed this office it was releasing certain responsive information. However, you now raise section 552.108 of the Government Code for the previously requested information which the institute indicated it was releasing in response to the earlier request. Section 552.007 of the Government Code provides 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). Accordingly, pursuant to section 552.007, the institute may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 for the submitted information, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision No. 177 at 10-11 (1977) (statutory predecessor to section 552.108 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the institute may not now withhold any previously released information under section 552.108. We will, however, address your claim under section 552.108 for the submitted information not previously released. Additionally, we note some of the previously released information is subject to sections 552.117 and 552.137 of the Government Code.<sup>1</sup> As sections 552.117 and 552.137 make information confidential under the Act, we will address the applicability of these sections to the previously released information.

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 that would otherwise qualify for exception under section 552.108 as 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 agency that it wishes to have the information withheld.

You state, and provide documentation demonstrating, the Travis County District Attorney’s Office objects to disclosure of the submitted information because its release would interfere with a pending criminal investigation. Based on your representations, we conclude that the institute may withhold the submitted information not previously released under section 552.108(a)(1) of the Government Code. *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).

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. We note section 552.117 encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Accordingly, if the individuals whose cellular telephone numbers we have marked timely requested confidentiality under section 552.024, the institute must withhold their information under section 552.117(a)(1) of the Government Code if the cellular service is not paid for by a governmental body. If the individuals at issue did not make a timely election under section 552.024 or if the cellular service was paid for by a governmental body, the institute may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code exempts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked do not appear to be a type specifically excluded by section 552.137(c). Accordingly, the institute must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the e-mail addresses consent to their release.

In summary, the institute may withhold the information not previously released under section 552.108(a)(1) of the Government Code. If the individuals whose cellular telephone numbers we have marked timely requested confidentiality under section 552.024 of the Government Code, the institute must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the cellular service is not paid for by a governmental body. The institute must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the e-mail addresses consent to their release. The institute must release the remaining information.

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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/som

Ref: ID# 479646

Enc. Submitted documents

c: Requestor  
(w/o enclosures)