



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2013

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

OR2013-03422

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# 480769 (CPRIT 2013-52).

The Cancer Prevention & Research Institute of Texas (the "institute") received a request for (1) all contracts or other agreements between the institute, the Cancer Prevention & Research Institute of Texas Foundation (the "foundation"), and a named company; and (2) all correspondence to the institute from the foundation, employees of the named company, and any subcontractors of the named company during a specified period of time. You indicate you have released the requested contracts and agreements. 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 you have submitted information that was created after the institute received the instant request and falls outside the period of time specified in the instant request. Therefore, this information, which we have marked, is not responsive to the present request. The institute need not release non-responsive information in response to the request, and this ruling will not address that information.

Next, we note the institute has redacted portions of the submitted information. We understand you have redacted certain information under section 552.136(c) of the Government Code and personal e-mail addresses under section 552.137 of the Government

Code pursuant to Open Records Decision No. 684 (2009).¹ However, you do not assert, nor does our review of our records indicate, the institute has been authorized to withhold the remaining information at issue without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information at issue; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the institute should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Next, we must address the institute's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). You state you received the request for information on December 12, 2012. You inform us the institute observed holidays on December 24, 25, and 26, 2012. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. You state you attempted to deliver your request for a decision on December 31, 2012, but you state the Office of the Attorney General was closed and the Texas Comptroller of Public Accounts' interagency mail service was not operating. However, the information you provided shows December 31, 2012, was a business day for the institute. Thus, the institute was required to request a decision from this office by December 31, 2012. However, the institute hand delivered the request for a ruling on January 2, 2013. Accordingly, we conclude the institute has failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990,

¹Section 552.136 of the Government Code permits a governmental body to redact the information described in section 552.136(b) without the necessity of requesting a decision from this office. *See* Gov't Code § 552.136(c)-(e) (providing procedures for redaction of information). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an email address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

no writ); Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the interests of a governmental body, other than the one that failed to comply with section 552.301, to withhold information under section 552.108 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). You provide correspondence from the Travis County District Attorney's Office (the "district attorney's office") objecting to the release of the responsive information. Therefore, we will consider whether the institute may withhold the responsive information under section 552.108 of the Government Code on behalf of the district attorney's office.

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 district attorney's office stating, the responsive information relates to a pending criminal investigation by the district attorney's office and release of the information could interfere with that investigation. Based on this representation and our review, we conclude release of the 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). Thus, the institute may withhold the responsive information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal line extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 480769

Enc. Submitted documents

c: Requestor
(w/o enclosures)