



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2013

Ms. Cheryl Elliott Thornton
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2013-04348

Dear Ms. Thornton:

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# 481520 (C.A. File No. 13PIA0005).

The Harris County Constable Precinct 5 (the "constable's office") received a request for the disciplinary action and complaint records for two named officers who were involved in a specified case. You claim the submitted information is excepted from disclosure under sections 552.102, 552.108, 552.111, 552.117, and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). The submitted information consists of completed internal affairs investigations, which are subject to section 552.022(a)(1) and must be released unless they are either excepted under section 552.108 of the Government Code or are confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.111 of the Government Code, this section is

¹Although you also raise section 552.021 of the Government Code, we note this section is not an exception to disclosure under the Act. See Gov't Code § 552.021.

discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally); 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Therefore, the constable's office may not withhold the information subject to section 552.022 under section 552.111. However, because information subject to section 552.022(a)(1) may be excepted under section 552.108 of the Government Code, we will address your argument under this exception. Additionally, because sections 552.102, 552.117, and 552.1175 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions.

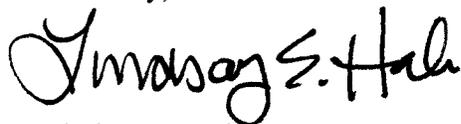
Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). As previously noted, the submitted information pertains to internal affairs investigations. Section 552.108 is generally not applicable to the records of an investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you submit an affidavit from a representative of the constable's office explaining the submitted information relates to the case specified in the request, which is a pending criminal investigation, and release of the submitted information would interfere with the investigation or prosecution of crime. Based upon these representations and our review, we conclude release of the submitted information would interfere with the detection, investigation, or prosecution of crime, and the constable's office may withhold the submitted information under section 552.108(a)(1). *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). As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 481520

Enc. Submitted documents

c: Requestor
(w/o enclosures)