



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 16, 2013

Ms. Evelyn W. Njuguna  
Staff Attorney  
City of Houston Police Department  
1200 Travis  
Houston, Texas 77002-6000

OR2013-08156

Dear Ms. Njuguna:

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# 487577 (ORU No. 13-1235).

The Houston Police Department (the "department") received a request for any information pertaining to courses completed by a named officer. 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 have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we will address the requestor's assertion that the department did not comply with the procedural obligations of section 552.301 of the Government Code. Pursuant to section 552.301(b) of the Government Code, a governmental body must request a ruling from this office and state the exceptions that apply within ten-business-days after receiving the request for information. *See id.* § 552.301(b). The requestor states she first requested information from the department on January 18, 2013 and that the department did not timely assert any exception as required by section 552.301. The submitted information shows the department responded to the January 18, 2013 request and informed the requestor there was no responsive information. We note this office must rely on a governmental body to make a good-faith effort to determine what information is responsive to a request. *See* Open Records Decision No. 590 (1991). Accordingly, based on the representation from the department and information provided to this office, we conclude the department timely responded to the prior request and the February 27, 2013 request is a new and separate request for information. Accordingly, the department's ten-business-day deadline to request a ruling from this office in response to the February 27, 2013 request was March 13, 2013.

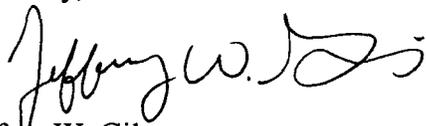
The envelope in which the department sent its request for a ruling to this office is postmarked March 12, 2013. *See* Gov't Code § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the department complied with section 552.301(b) of the Government Code in requesting a ruling from this office.

Section 552.108(a)(1) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation showing, the “officer named in the request is expected to be a witness in a criminal case that is currently pending before a Harris County Court.” However, the submitted documentation demonstrates the pending proceeding pertains to a post-conviction writ filed by the defendant. We note post-conviction writ proceedings do not establish the existence of an ongoing criminal investigation or prosecution for the purposes of section 552.108(a)(1). Thus, we find the department has failed to demonstrate the applicability of section 552.108. Accordingly, the department may not withhold any of the submitted information under section 552.108(a)(1). As you raise no further exceptions to disclosure, the department must release the submitted 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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 487577

Enc. Submitted documents

c: Requestor  
(w/o enclosures)