



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2013

Mr. Frank Peterson
Emergency Management Coordinator
Waco-McLennan County Office of Emergency Management
P.O. Box 1728
Waco, Texas 76703-1728

OR2013-08813

Dear Mr. Peterson:

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# 493261.

The Waco-McLennan County Office of Emergency Management (the "county") received five requests from different requestors for information pertaining to the West Fertilizer Company and information pertaining to the county's Local Emergency Planning Committee. You state some information has been released to the requestors. 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.

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[.]" 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* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body 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 the submitted information relates to a pending criminal investigation being conducted by the State Fire Marshall's Office (the "fire marshall's office"). *See generally* Open Records Decision No. 127 (1976) (providing that an arson investigation unit of a fire department is considered a law enforcement agency for purposes of section 552.108 of the Government Code). You also state the fire marshall's office objects to the disclosure of the submitted information because its release would interfere with its pending criminal investigation. Based upon these representations, we conclude the release of the submitted 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the county may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the fire marshall'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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 493261

Enc. Submitted documents

c: 5 Requestors
(w/o enclosures)