



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2013

Ms. Molly Cost
Assistant General Counsel
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78775-0001

OR2013-10242

Dear Ms. Cost:

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# 490952 (PIR# 13-1254).

The Texas Department of Public Safety (the "department") received a request for the yearly summary of wiretap activity in Texas produced by the department for each of the last five years. You claim some of the requested 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[.]" 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). You have submitted reports of applications and/or orders authorizing interception of communications that prosecutors and judges are required to produce pursuant to certain reporting requirements in section 15 of article 18.20 of the Code of Criminal Procedure.

See Code Crim. Proc. art. 18.20, § 15(a)-(c). You seek to withhold the submitted reports under section 552.108(a)(1) and state the reports pertain to ongoing investigations.

This office previously addressed the applicability of the statutory predecessor of section 552.108 to such reports maintained by the department in Open Records Decision No. 553 (1990). In that decision, we noted that an individual who has been a subject to a wiretap, or to an application for an order authorizing a wiretap, will be informed of that action under section 13 of article 18.20. ORD 553 at 5; *see also* Code. Crim. Proc. art. 18.20, § 13 (persons named in an order or application shall be provided notice within a reasonable time and not later than 90 days after date an application is denied or an order or last extension expires). We further stated:

Law enforcement interests could be harmed if the individual who was subject to the wiretap learned about it prior to the time he received the official notice under section 13 of article 18.20. Although the judge's and prosecutor's reports do not state the name, address, or phone number of persons or places involved in the wiretap, they identify the county of the wiretap and the alleged offense. This information could alert an individual to the fact that he has been subject to a wiretap and that an investigation based on the information secured by wiretapping might be underway. An individual could also conclude from a judge's or prosecutor's report denying a wiretap that his conduct was under close scrutiny by law enforcement officers.

ORD 553 at 6. Accordingly, we held until notice is given to the individual pursuant to section 13 of article 18.20, the judge's and prosecutor's reports are excepted in their entirety by the statutory predecessor to section 552.108(a)(1) of the Government Code. *Id.* at 7-8. However, we concluded once notice is given, there is no longer any law enforcement interest based on keeping from an individual the fact that he has been subject to a wiretap or an order denying a wiretap. *Id.* Additionally, we found that, although the release of such reports could potentially interfere with law enforcement interests in a particular instance, we could not discern from the face of the documents how their release would interfere with law enforcement once notice had been given and the individual subject to the wiretap application or order knows that he is under suspicion. *Id.* at 7.

You do not inform this office whether notice has been provided to any of the individuals who are the subject of the submitted reports. Additionally, you do not provide any other arguments explaining how release of the submitted reports would interfere with law enforcement. Accordingly, we must rule conditionally. To the extent notice has not been provided to the individuals who are the subject of the submitted reports, the department may withhold the submitted reports in their entirety under section 552.108(a)(1) of the Government Code. To the extent notice has been provided to these individuals, we find the department has failed to demonstrate how release of the submitted reports would interfere

with law enforcement, and the department may not withhold the submitted reports under section 552.108(a)(1) of the Government Code.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 490952

Enc. Submitted documents

c: Requestor
(w/o enclosures)