



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2013

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

OR2013-12774

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# 494032 (CAO File No. 13PIA0238).

The Harris County Flood Control District (the "district") received a request for information relating to the flooding of four specified areas for specified time periods, all aerial photographs for a specified location and time period, information relating to the flood plains of two specified areas and time periods, and information pertaining to the mean high tide of a specified portion of the San Jacinto River. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 [of the Government Code]; [and]

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). Some of the submitted information consists of completed reports and investigations that are subject to section 552.022(a)(1) and invoices paid by the district that are subject to section 552.022(a)(3). The district may only withhold the information subject to section 552.022(a)(1) if it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. The district may only withhold the information subject to section 552.022(a)(3) if it is confidential under the Act or other law. Although you assert the information subject to section 552.022(a)(3) is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, these sections are discretionary and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the information subject to section 552.022(a)(3) under section 552.103 or section 552.108. As you raise no further exceptions to disclosure for the information subject to section 552.022(a)(3), it must be released. You also raise sections 552.103 and 552.108 for the information that is subject to section 552.022(a)(1). As noted above, section 552.103 does not make information confidential under the Act; thus, the district may not withhold the information that is subject to section 552.022(a)(1) under section 552.103. However, section 552.022(a)(1) states information subject to that section may be withheld under section 552.108. Accordingly, we will address whether the information subject to section 552.022(a)(1) may be withheld under section 552.108. We will also consider your arguments under sections 552.103 and 552.108 for the information that is not subject to section 552.022.

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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration that the information relates to a pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

As an assistant county attorney for the Harris County Attorney's Office (the “county attorney's office”), you state the information at issue relates to a pending criminal

prosecution by the county attorney's office and the State of Texas. Based upon your representation and our review, we conclude release of the information at issue 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, we conclude section 552.108(a)(1) is applicable, and the district may withhold the information that is not subject to section 552.022(a)(3) on this basis.¹ The information subject to section 552.022(a)(3), which we have marked, must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 494032

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.