



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2014

Ms. Julia Gannaway
Counsel for City of Waxahachie
Lynn, Ross & Gannaway, LLP
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2014-05222

Dear Ms. Gannaway:

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# 518132.

The Waxahachie Police Department (the "department"), which you represent, received a request for employment information pertaining to a specified police officer. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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(a)(1) must reasonably explain how and why release of the information at issue 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). We note the submitted information consists of documents pertaining to internal investigations. Section 552.108 is generally not applicable to purely administrative records that do not result

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

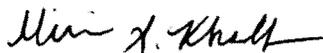
in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 562 at 10 (1990).

You state the submitted information relates to a pending criminal prosecution by the Ellis County District Attorney's Office (the "district attorney's office") in which the specified officer was the arresting officer in the incident at issue. Additionally, you state the requestor is seeking negative information on the arresting officer in anticipation of the criminal trial of his client. Further, you indicate the district attorney's office objects to the release of the submitted information. Based on these representations, we conclude section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* 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). Therefore, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 518132

Enc. Submitted documents

c: Requestor
(w/o enclosures)