ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2014

Mr. Jesse M. Blakley
Assistant District Attorney
Criminal District Attorney's Office
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2014-22627

Dear Mr. Blakley:

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# 545894.

The Brazoria County District Attorney's Office (the "district attorney's office") received a request for information regarding the arrest and detention of the requestor's client. You claim the requested 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.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). The submitted information consists of a completed use of force investigation. This information is subject to section 552.022(a)(1) and must be released unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law.

Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does 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 No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district attorney's office may not withhold the submitted information under section 552.103.

As previously noted, section 552.022(a)(1) states information subject to that section may be withheld under section 552.108. Accordingly, we will address your claim under this exception.

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)(l) 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)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the district attorney's office "cannot represent that [release of] the information [at issue] would interfere with the detection, investigation, or prosecution of crime." You assert the Federal Bureau of Investigation (the "FBI") is conducting a civil rights investigation regarding this matter. You inform this office you contacted the FBI, but the FBI representative you spoke with stated the FBI will not provide a representation regarding the status of its investigation. Upon review, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the submitted information. Consequently, the district attorney's office may not withhold any part of the submitted information under section 552.108(a)(1) of the Government Code. As you raise no other exception to disclosure, the district attorney's office must release the submitted information to the requestor.[1]

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.

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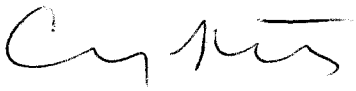
[1]We note the requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023 (person or person's representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 545894

Enc. Submitted documents

c: Requestor
(w/o enclosures)