



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2016

Ms. Kristen Lee
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2016-22698

Dear Ms. Lee:

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# 633712 (ORR# 16PIA0487).

The Harris County Civil Service Commission (the "commission") received a request for the civil services records of two named individuals. The commission states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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 explain how and why the 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, 710 (Tex. 1977). Where a non-law enforcement agency possesses information relating to a pending case of a law enforcement agency, the non-law enforcement agency may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and provides this office with a representation from the law enforcement agency that wishes to withhold the information. We also note section 552.108 is generally not applicable to records that are purely administrative in nature and do not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex.

App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency’s personnel records); Open Records Decision No. 350 at 3-4 (1982). The submitted information consists of an internal administrative investigation and personnel records of the employee at issue. However, the commission has submitted a representation from the Harris County District Attorney’s Office (the “district attorney’s office”) objecting to the release of the submitted information because it would interfere with a pending criminal prosecution. Based on this representation, 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, 186-87 (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). Thus, the commission may withhold the submitted information on behalf of the district attorney’s office 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.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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 633712

Enc. Submitted documents

c: Requestor
(w/o enclosures)