



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 18, 1998

Mr. David Sochia  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
Renaissance Plaza, Suite 800  
79 N.E. Loop 410  
San Antonio, Texas 78216

OR98-3195

Dear Mr. Sochia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120695.

The Alamo Community College District ("ACCD"), which you represent, received a request for a "police report" and ACCD memoranda to ACCD employees related to a certain incident. You seek to withhold the requested information under sections 552.103 and 552.108 of the Government Code.

Section 552.108(a)(1) exempts from required public disclosure

(a) Information 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[.]

You advise that the matter to which the requested information relates is "still active and being considered by the Bexar County District Attorney's Office" for prosecution. You indicate that ACCD employs peace officers. It may thus, in our opinion, be considered a law enforcement agency for purposes of section 552.108. *See e.g., A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). Moreover, we believe that, although the "police report" responsive to the request appears to have been created by the Department of Public Safety and not ACCD, ACCD as a proper custodian of the report may invoke section 552.108 in order to withhold the report. *See e.g. Open Records Decision No. 372 (1983)*. Based on the above considerations, we conclude that you may withhold the police report you submitted as responsive to the request.

On the other hand, we do not believe that you have shown, nor is it apparent on the face of the documents, how the requested memoranda to ACCD employees would, if released, interfere with "the detection, investigation, or prosecution of a crime" under section 552.108(a)(1), or fall within any other provisions of the section 552.108 exception.

Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public disclosure information

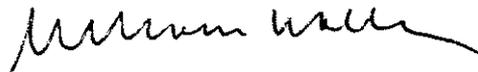
(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Since we have already determined that you may withhold the submitted police report under section 552.108, we address your section 552.103 claim only with respect to the submitted ACCD memoranda to ACCD employees. Although you advise that the incident to which the requested information relates is "still being considered by the Bexar County District Attorney," you have not provided documentation from that office as to the likelihood of its prosecuting the case or the relatedness of the memoranda in question to such prosecution. Thus, we do not believe that you have sufficiently demonstrated that the memoranda in question relate to reasonably anticipated litigation, and accordingly you may not withhold the memoranda under section 552.103. The memoranda must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref: ID# 120695

Enclosures: Submitted documents

cc: Ms. Stacy Lunsford  
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(w/o enclosures)