



August 20, 1999

Ms. Susanna K. Holt
Assistant Attorney General
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

OR99-2362

Dear Ms. Holt:

You have asked 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# 126773. Your office has assigned this request reference number 99-5009.

The Office of the Attorney General (the "OAG") received a request for "all documents evidencing communications between former First Assistant Attorney General Will Pryor and former Attorney General Dan Morales, Attorney General John Cornyn or anyone else within the Attorney General's office since January 31, 1997 that related to the . . . Tobacco Suit." In response to the request, you submit to this office for review a document which appears to be a representative sample of the information at issue. In your initial letter to this office, you state that you seek to withhold the requested information under sections 552.101, 552.103, 552.107 and 552.111 of the Government Code. In your subsequent brief to this office, you also claim that the requested records are subject to exception from required disclosure under section 552.108 of the Government Code.¹ We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

Section 552.108, the "law enforcement," exception excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

¹In this instance, you did not timely raise section 552.108. However, you have presented this office with a compelling demonstration as to why the requested information should be withheld pursuant to section 552.108.

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

....

(c) This section does not except from the requirements of section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body that seeks to avail itself of an exception from disclosure must assert that exception within ten business days of receiving the request for information.² Gov't Code § 552.301. The failure to timely raise an exception results in the presumption that the information is public. Gov't Code § 552.302. The presumption that the information is public is "overcome only by a compelling demonstration that the requested information should not be made public." *Hancock v. State Bd. of Ins.* 797 S.W. 2d 379 (Tex. App –Austin 1990, no writ). You have presented this office with a compelling demonstration as to why the requested information should be withheld pursuant to section 552.108.

In addressing the release of information excepted under the predecessor statute to section 552.108, this office held that "the need of a governmental body, other than the body that has failed to timely seek an open records decision, may, in appropriate circumstances be a compelling reason for non-disclosure." Open Records Decision No. 586 (1991). You have informed this office that the responsive information relates to an investigation being conducted by the Federal Bureau of Investigation (FBI) and that both the FBI and the United States Attorney have requested that the information not be released. You assert that the subject information is related to an ongoing criminal investigation and that the investigating agency has requested that the information be withheld from public disclosure. Based upon your representations, we conclude that the subject information may be withheld under section 552.108(a)(1) of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ This ruling is limited to the particular records at issue under the facts

²A governmental body may waive a claim under section 552.108 of the Government Code. See Open Records Decision No. 177 (1977).

³In reaching our conclusion, we assume that 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),

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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 126773

Encl. Submitted information

cc: Mr. John T. Gerhart
Jenkins & Gilchrist
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202
(w/o enclosures)

497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.