



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2003

Ms. Karen Rabon  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2003-7725

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190381.

The Office of the Attorney General (the "OAG") received a request for information relating to the prosecution of a former employee of the Montgomery County District Attorney's Office. You claim that the requested information is excepted from disclosure under sections 552.107, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample records.<sup>1</sup>

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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id* 552.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this

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<sup>1</sup>We assume that the "sample" records submitted to this office are 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 that those records contain substantially different types of information than that submitted to this office.

instance, you explain that the Criminal Law Enforcement Division of the OAG was asked by the Montgomery County District Attorney's Office (the "district attorney") to assist in the initial preparation of the case and indictment of a former employee of the district attorney. *See* Gov't Code § 402.028 (stating that at request of district attorney, attorney general may provide assistance in prosecution of all manner of criminal cases). You further explain that the district attorney has subsequently recused his office from the case and has turned the prosecution over to an attorney pro tem. Although you indicate that the OAG is no longer assisting in the prosecution, you have submitted a letter from the attorney pro tem who states that the OAG is in possession of information relating to the case. The attorney pro tem further states that the release of the records at issue would interfere with his ongoing investigation and prosecution of this case. Based on these representations and our review of the submitted information, we agree that the release of the requested records would interfere with the detection, investigation, or prosecution of crime. Accordingly, the OAG may withhold the requested information under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision Nos. 474 (1987), 372 (1983) (concluding that Gov't Code § 552.108 may be invoked by any proper custodian of information that relates to pending criminal investigation or prosecution).

Because we are able to make a determination under section 552.108, we need not address your additional arguments against disclosure. This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

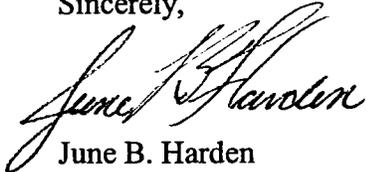
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 190381

Enc: Submitted documents

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(w/o enclosures)