



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2009

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-05449

Dear Ms. Chang:

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# 340884.

The Houston Health and Human Services Department (the "department") received a request for (1) information pertaining to disciplinary action taken against three named individuals, (2) correspondence between several named individuals over a specified period of time, (3) interdepartmental memoranda sent by two named individuals over a specified period of time, and (4) information pertaining to the termination of a named individual. You state some of the requested information will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹You did not raise section 552.137 until after the ten-business day deadline. *See* Gov't Code § 552.301(b). Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See id.* § 552.302. However, mandatory exceptions cannot be waived by a governmental body. *See id.* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Because section 552.137 is a mandatory exception, we will consider your argument under section 552.137.

²We 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), 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.

Section 552.108(a)(1) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a pending criminal investigation conducted by the City of Houston’s Office of Inspector General. You further represent to this office that the Office of Inspector General has requested the information at issue not be released. Based on your representations, we conclude that section 552.108(a)(1) is applicable to the submitted information. *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). Therefore, the department may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code.³

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 340884

Enc. Submitted documents

c: Requestor
(w/o enclosures)