



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2009

Mr. Keith A. Martin
Corporate Counsel
San Antonio Water System
P. O. Box 2449
San Antonio, Texas 78298

OR2009-13733

Dear Mr. Martin:

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# 356773.

The San Antonio Water System (the "system") received a request for information pertaining to all complaints made against the requestor's company. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in part:

(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; [or]

(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[.]

Gov't Code § 552.108(a)(1), (2). We note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) applies to information pertaining to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records pertaining to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information 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 (Tex. 1977). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation or prosecution that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code §§ 552.108(a)(2), .301(e)(1)(A). Section 552.108 excepts from disclosure certain records of law enforcement agencies and prosecutors. Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim that section 552.108 protects records in its possession. *See, e.g.*, Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 (1988), 272 (1981). If an administrative agency's investigation reveals possible criminal conduct that the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. *See* Gov't Code 552.108(a)(1), (b)(1); Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 (1988), 272 (1981).

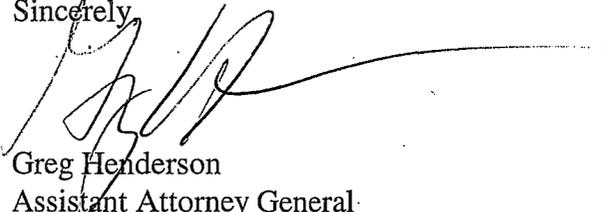
You state the system hires City of San Antonio police officers who issue citations for water restriction violations. However, you have failed to demonstrate how the system is a law enforcement agency for purposes of section 552.108. Further, you state no citation was issued for the violation at issue, and you have not demonstrated that the submitted information was forwarded to an appropriate law enforcement agency. Accordingly, none of the submitted information may be withheld under section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the submitted information must be released.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Henderson', with a long horizontal flourish extending to the right.

Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 356773

Enc. Submitted documents

c: Requestor
(w/o enclosures)