



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2009

Mr. Frank J. Garza
Law Offices of Davidson & Troilo
7550 W IH-10, Suite 800
San Antonio, Texas 78229-5815

OR2009-14728

Dear Mr. Garza:

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# 358635.

The City of Balcones Heights (the "city"), which you represent, received a request for a list of the vehicles sold at an auto auction, the purchasers of those vehicles, and any and all records relating to complaints and administrative leave involving the former police chief in reference to the auto auction. You state that you have released some of the requested information. You also state that there are no documents that satisfy the request for information involving administrative leave and the former police chief that relates to the auto auction.¹ You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental

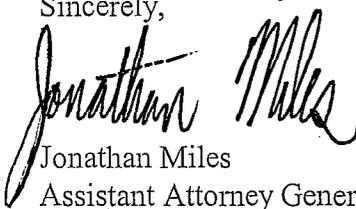
¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamange*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dim'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. You state that the submitted information is related to a pending criminal investigation. Further, you state that the investigating law enforcement agency has asked that the submitted information be withheld from disclosure as the release of the submitted information will interfere with the prosecution of this case. Based upon your representations and our review, we find 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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, the city may withhold the submitted information on behalf of the law enforcement agency pursuant to section 552.108(a)(1) of the Government Code.

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,


Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 358635

Enc. Submitted documents

c: Requestor
(w/o enclosures)