



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2009

Lt. Chuck Cox
Administrative Services
Bell County Sheriff's Office
P.O. Box 749
Belton, Texas 76513

OR2009-16277

Dear Lt. Cox:

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# 362111.

The Bell County Sheriff's Office (the "sheriff's office") received a request for all witness statements, polygraph tests, correspondence, and statements related to the cases against two named individuals. You state that there were no polygraph tests conducted for these cases. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). 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(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 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). You explain that in case number 04-003222 although one defendant was convicted and has exhausted all appeals, the

other defendant is currently seeking an appeal in the Texas Court of Criminal Appeals. You have provided an affidavit from the Bell County District Attorney's Office (the "district attorney") which states that both defendants "were charged with the murder of the same victims during the course of the same criminal episode and the information in the files of the investigating officers is virtually identical." We find that the information regarding both defendants is so intertwined that the submitted information for this case could not be segregated. We understand the district attorney requests the information in this case be withheld because release of these records at this time will interfere with its ability to handle the appeal. Based on your representation and the submitted affidavit, we conclude that section 552.108(a)(1) is applicable to case number 04-003222. *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). You state case number 04-003248 resulted in formal charges of capital murder against both defendants, but the case has not been tried and is still pending further disposition. We also understand the district attorney requests the information at issue in this case be withheld because release of these records at this time would interfere with its ability to prosecute the case. Based on your representation and the submitted affidavit, we conclude that section 552.108(a)(1) is applicable to case number 04-003248. *See id.*

However, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, the sheriff's office must release the types of basic information listed in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). With the exception of basic information, the sheriff's office may withhold the submitted information in case numbers 04-003222 and 04-003248 under section 552.108(a)(1) of the Government Code.

We note that basic information includes the social security number of an arrestee. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ Gov't Code § 552.147. Therefore, the sheriff's office may withhold the social security numbers of the arrestees pursuant to section 552.147 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.

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 362111

Enc. Submitted documents

c: Requestor
(w/o enclosures)