



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2010

Ms. Jordan Hale
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2010-10277

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 386198 (PIR No. 10-27826).

The Office of the Attorney General (the "OAG") received a request for 1) information pertaining to programs used to evaluate Medicaid provider utilization, 2) information created to reflect utilization patterns, statistical profiles, outlier service patterns, billing patterns, and high-volume output for ENT specialist providers in the Medicaid program, and 3) information pertaining to Dr. Vincent Honrubia. The OAG released some information and asserts the remainder is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the OAG's claimed exception to disclosure and have reviewed the submitted sample of information.¹

Section 552.108(a) 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 release of the requested

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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 instance, the OAG argues release of Exhibit B, which relates to a current criminal investigation by its Medicaid Fraud Control Unit (“MFCU”), will compromise the investigation. Based on the OAG’s representation and our review of the records, we agree the OAG may withhold Exhibit B under section 552.108(a)(1). *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).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g Co.* Thus, with the exception of the basic front page offense and arrest information, the OAG may withhold Exhibit B from disclosure based on section 552.108(a)(1).²

Next, the OAG asserts section 552.108(b)(1) excepts Exhibit C from public disclosure. Section 552.108(b)(1) provides:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov’t Code § 552.108(b)(1). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has stated that under the statutory predecessor to section 552.108(b)(1), a governmental body may withhold information that would reveal law enforcement techniques or procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers’ licenses).

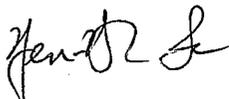
The OAG asserts release of Exhibit C would interfere with MFCU’s “detection and prosecution of fraud because . . . release would (1) reveal the precise behaviors being targeted by MFCU and (2) reveal the methodology MFCU uses the program to identify and prosecute Medicaid fraud.” After review of the information, we conclude the OAG may withhold Exhibit C pursuant to section 552.108(b)(1).

²Because section 552.108(a)(1) is dispositive, we do not address the OAG’s other arguments for Exhibit B.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 386198

Enc: Submitted documents

c: Requestor
(w/o enclosures)