



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 23, 2011

Ms. Jessica C. Eales  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2011-02710

Dear Ms. Eales:

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# 414045 (GC No. 18219).

The Houston Emergency Center (the "center") received a request for information pertaining to certain dispatches to a specified police unit and calls for service at a specified location. You claim the requested 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's argument the center has waived its claim under section 552.108 of the Government Code because the Harris County District Attorney's Office (the "district attorney") released a copy of an offense report related to the requested information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See id.* § 552.007; Open Records Decision Nos. 518 at 3 (1989), 400 at 2 (1983). In this instance, the submitted information does not include an offense report, which the requestor states was released by the district attorney. Therefore, we find the center has not previously released any of the submitted information to the requestor; thus, it has not waived its claim under section 552.108. Accordingly, we will address the center's claim under section 552.108.

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 body must reasonably explain how and why section 552.108 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). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You indicate the district attorney objects to disclosure of the information at issue because its release would interfere with a pending criminal prosecution. Based on your representations, we conclude 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Although we understand the requestor to claim the center must release basic information to him pursuant to section 552.108(c), we note the submitted information does not contain basic information. Accordingly, the center may withhold the requested information under section 552.108(a)(1).

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/tf

Ref: ID# 414045

Enc. Submitted documents

c: Requestor  
(w/o enclosures)