



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2011

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78765-4087

OR2011-03105

Dear Ms. Cohen:

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# 410828 (ORA Nos. 10-2856 and 10-2901).

The Texas Department of Public Safety (the "department") received two requests from two requestors for (1) records and/or investigative reports related to the investigation a named Texas Ranger and (2) all correspondence involving three named individuals regarding specified allegations against a named Texas Ranger from April 6, 2009 to the date of the request. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential. Section 411.00755 of the Government Code states in pertinent part:

(b) The personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, except the department shall release in accordance with Chapter 552:

(1) any letter, memorandum, or document relating to:

(B) misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action[.]

Id. § 411.00755(b). Section 411.00755 defines a personnel record, in part, as “any letter memorandum, or document maintained by the department that relates to a commissioned officer of the department[.]” *Id.* § 411.00755(a). For the purpose of section 411.00755, “disciplinary action” means discharge, suspension, or demotion. *Id.* § 411.0072(a)(1). You state the submitted information consists of the named Texas Ranger’s personnel records. In Open Records Letter No. 2010-12863 (2010), this office issued a previous determination to the department authorizing it to withhold, with the exception of the information listed in subsections 411.00755(b)(1)-(12), the personnel records of commissioned officers of the department under section 411.00755(b) of the Government Code, without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 673 (2001) (previous determinations generally). However, we note the information you seek to withhold under section 411.00755 includes a letter relating to the officer’s suspension. This information, which we have marked, is subject to subsection 411.00755(b)(1)(B). The marked information may not be withheld under section 411.00755 and is not encompassed by the previous determination issued to the department in Open Records Letter No. 2010-12863. Therefore, based on your representations and our review of the information at issue, we find that, with the exception of the information we have marked under subsection 411.00755(b)(1)(B), the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code pursuant to the previous determination issued to the department in Open Records Letter No. 2010-12863.

You raise section 552.108(a)(1) of the Government Code for the remaining 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) 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). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). Section 552.108 may be invoked by any proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983). Where an agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a different law enforcement agency, the custodian of the

records may withhold the information only if it provides this office with (1) a demonstration that the information relates to the pending case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information.

We have received a representation from the Office of the Attorney General of Texas (the "OAG") stating the release of the information at issue would interfere with a pending criminal investigation and prosecution being conducted by the OAG's Criminal Prosecutions Division. Based on this representation and our review of the submitted information, we conclude that release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *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). Thus, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the OAG.

In summary, with the exception of the information we have marked under subsection 411.00755(b)(1)(B), the department must withhold the submitted information under section 411.00755 of the Government Code pursuant to the previous determination issued to the department in Open Records Letter No. 2010-12863. The department may withhold the remaining information we have marked under 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 410828

Enc. Submitted documents

c: Requestors
(w/o enclosures)