



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2011

Mr. Thomas Bailey
Legal Services
Via Metropolitan Transit
P.O. Box 12489
San Antonio, Texas 78212-0489

OR2011-07224

Dear Mr. Bailey:

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# 418355.

VIA Metropolitan Transit ("VIA") received requests from four requestors for the following information related to a specified collision involving a VIA bus: (1) the in-bus surveillance video documenting the collision, (2) the bus driver's driving record, (3) the bus driver's badge photo, and (4) any reports generated by VIA concerning the collision. You claim 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.

Initially, we note you have not submitted information responsive to the requests for the driver's badge photo and for the reports generated by VIA concerning the collision. To the extent such information exists, we presume VIA has released it. If not, VIA must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

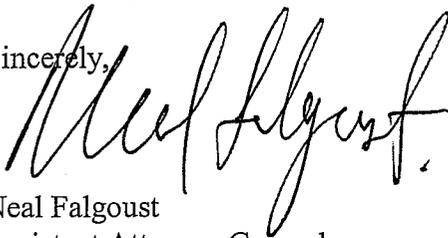
Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 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). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has determined, however, that where an incident involving alleged criminal conduct is still under active investigation or

prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). 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 the attorney general with a demonstration that the information relates to a pending case and a representation from the law enforcement entity that it wishes to withhold the information. You state the submitted information is the subject of a criminal investigation being conducted by the San Antonio Police Department (the "department"). Further, you have provided this office with an affidavit from a department officer that states the criminal investigation is ongoing and indicating release of the information would hinder the investigation. *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). Based on these representations and our review, we agree VIA may withhold the submitted information 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 418355

Enc. Submitted documents

c: Requestors
(w/o enclosures)