



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Mr. Luke M. Inman
District Attorney
Office of the 100th Judicial District Attorney
800 West Avenue, Box 1
Wellington, Texas 79095

OR2012-05129

Dear Mr. Inman:

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# 450687.

The Office of the 100th Judicial District Attorney (the "district attorney's office") received a request for information pertaining to a specified incident. You claim the district attorney's office is not the custodian of the requested information. In the alternative, you claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you assert the district attorney's office is not the proper custodian of the submitted information. We understand you to argue that the different law enforcement agencies who assisted in the investigation are the proper custodians of the information at issue. We note, however, that section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002. In this instance, the district attorney's office maintains the information in connection with the transaction of its official business. Therefore, the district attorney's office is a proper custodian for the information at issue. Thus, we will consider your arguments against the disclosure of the requested information.

You raise section 552.108 of the Government Code, which provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably show that the exception is applicable to the requested information by explaining how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to a criminal prosecution currently pending in the 100th Judicial District. Accordingly, we understand you to raise section 552.108(a)(1). Based upon your representation, we conclude that the release of the requested 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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, the district attorney's office may withhold the requested information from disclosure under subsection 552.108(a)(1).¹ We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

¹ We note basic information includes the social security number of an arrested person. Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person from any information the governmental body discloses under section 552.021 without the necessity of requesting a decision from the attorney general. Gov't Code § 552.147(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,

A handwritten signature in black ink, appearing to read 'Ben Bellomy', with a long horizontal line extending to the right.

Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/eb

Ref: ID# 450687

Enc. Submitted documents

c: Requestor
(w/o enclosures)