



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2013

Ms. Cheryl Elliott Thornton
Assistant County Attorney
Harris County
1019 Congress, 15th floor
Houston, Texas 77002-1700

OR2013-00110

Dear Ms. Thornton:

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# 475110 (CAO File Nos. 11PIA0540 and 12PIA0540).

The Harris County Constable, Precinct 4 (the "constable's office") received a request for a copy of the requestor's application, disciplinary records, and verbal counseling. The requestor is also seeking information pertaining to a specified disciplinary action and all information pertaining to IAD complaints against the requestor. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, 552.117, and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the constable's office's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state

¹Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this section based on your arguments. Additionally, although you also initially raised section 552.103 of the Government Code, you have provided no arguments for the applicability of that exception. Therefore, this decision does not address section 552.103. See Gov't Code §§ 552.301(e)(1)(A), .302.

the exceptions to disclosure that apply within ten business days after receiving the request. Gov't Code § 552.301(b). While you raised section 552.108 of the Government Code within the ten-business-day time period required by subsection 552.301(b), you did not raise sections 552.101, 552.102, 552.111, 552.117, or 552.1175 of the Government Code until after the ten-business-day deadline had passed. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.111 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). In failing to comply with section 552.301(b), the constable's office has waived its claim under section 552.111, and may not withhold the submitted information on the basis of this exception. However, you also raise sections 552.101, 552.102, 552.117, and 552.1175 of the Government Code. Because these exceptions can provide compelling reasons for non-disclosure, we will consider whether any of the submitted information must be withheld under sections 552.101, 552.102, 552.117 and 552.1175. Additionally, we will address your timely raised argument under section 552.108 of the Government Code.

Section 552.108(a) 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: (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 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). The submitted information pertains to an internal affairs administrative investigation of an incident. Section 552.108 is generally not applicable to the records of an investigation that is purely administrative in nature and that 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); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you submit an affidavit from a captain with the constable's office explaining that the submitted information relates to an ongoing criminal investigation and prosecution, and release of the information would interfere with the investigation and prosecution of the incident at issue. Based upon your representations and our review, we conclude that the release of the information at issue would interfere with the 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).

Therefore, we agree section 552.108(a)(1) is applicable and the constable's office may withhold the submitted information on this basis.²

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/bhf

Ref: ID# 475110

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.