



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2013

Ms. Cheryl Elliott Thornton
Assistant County Attorney
Harris County
1019 Congress Avenue, 15th Floor
Houston, Texas 77002

OR2013-19659

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# 505377 (CAO File No. 13PIA0433).

The Harris County Engineer Department (the "department") received a request for: (1) copies of professionally engineered drainage plans for a specified ditch on a specified property; (2) all paperwork submitted requesting a permit for the specified ditch; (3) all paperwork concerning permits actually issued for the specified ditch; and (4) any other information, maps, graphs, or plans concerning the specified drainage system. 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 some of the submitted information, which we have marked, is not responsive because it was created after the department received the request for information. The department need not release non-responsive information in response to the request, and this ruling will not address that information.

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(a)(1) 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). You state the submitted information relates to an ongoing criminal investigation. You have submitted documentation filed in litigation that is related to the submitted information. You provide a representation from the department objecting to the release of the submitted information. However, by its terms, section 552.108 applies only to a law enforcement agency or prosecutor. The department is not a law enforcement agency. Section 552.108, however, 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 governmental body has custody of information relating to a 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 have not provided our office with a representation from any law enforcement agency that wishes the submitted information to be withheld. Further, the litigation referenced in the department's affidavit and the submitted filing is civil in nature, and you have not explained how the submitted information relates to a criminal matter. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to submitted information, and the department may not withhold the submitted information on that basis.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).¹ *See Gov't Code § 552.137(a)-(c)*. The e-mail address we have marked is not excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.²

In summary, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The remaining responsive information must be released.

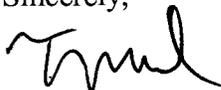
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 505377

Enc. Submitted documents

c: Requestor
(w/o enclosures)