



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2013

Ms. Myrna S. Reingold
Legal Department
Galveston County
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2013-20181

Dear Ms. Reingold:

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# 506193.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received two requests from different requestors for information related to the expenses of a specified special investigation, including payments made to the special prosecutor.¹ You state the district attorney's office has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107,

¹We note we have combined these requests, which originally were assigned identification numbers 506193 and 506464, under identification number 506193. You inform us the second requestor also submitted his request to the County Budget Officer. You inform us the County Budget Officer advised the district attorney's office that his department did not have any information responsive to the request. We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received or create new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You state "to avoid any waiver as to County records" you forwarded the second request to the County Auditor's Office. You state all records responsive to the request maintained by the County Auditor's Office were released to the second requestor.

552.108, 552.111, 552.1175, 552.136, and 552.147 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted 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 information you have marked pertains to two criminal prosecutions which were pending on the date the district attorney’s office received the request. You claim release of the information you have marked would interfere with those pending prosecutions. Based on your representations and our review, we conclude release of the information you have marked 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). Therefore, we agree section 552.108(a)(1) of the Government Code is applicable to the information you have marked and the district attorney’s office may withhold the information you have marked under section 552.108(a)(1).³

You state some of the remaining information is subject to section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual

²Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, this office has concluded that section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990)*. Additionally, although you also raise Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, we note the proper exceptions to raise when asserting the attorney-client privilege and work product privilege for information not subject to section 552.022 of the Government Code are sections 552.107 and 552.111 of the Government Code, respectively. *See Open Records Decision Nos. 677 (2002), 676 at 1-2*.

³As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). You have marked information you say relates to a peace officer under Article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the peace officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the district attorney's office must withhold the information you have marked pertaining to that peace officer under section 552.1175 of the Government Code. Conversely, if the peace officer at issue does not elect to restrict access to his information in accordance with section 552.1175(b), the marked information pertaining to that peace officer may not be withheld under section 552.1175.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the district attorney's office must withhold the information we have marked under section 552.136 of the Government Code.⁴ However, we find you have not explained how any of the remaining information you have marked consists of an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find you have failed to demonstrate the applicability of section 552.136 to the remaining information and the district attorney's office may not withhold any of the remaining information you have marked on this ground.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the district attorney's office may withhold the social security number you have marked under section 552.147 of the Government Code.⁵

⁴We note section 552.136(c) of the Government Code authorizes a governmental body to redact access device numbers subject to section 552.136(b) without requesting a decision. *See Gov't Code* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general, and governmental body withholding information pursuant to section 552.136(c) must provide notice to requestor).

⁵We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code* § 552.147(b).

In summary, the district attorney's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code. To the extent the peace officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the district attorney's office must withhold the information you have marked pertaining to that peace officer under section 552.1175 of the Government Code. The district attorney's office must withhold the information we have marked under section 552.136 of the Government Code. The district attorney's office may withhold the social security number you have marked under section 552.147 of the Government Code. The remaining information must be released.

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/akg

Ref: ID# 506193

Enc. Submitted documents

c: Requestors
(w/o enclosures)