



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2014

Ms. Susan Fillion  
Assistant County Attorney  
Harris County  
1200 Baker Street, 2<sup>nd</sup> Floor  
Houston, Texas 77002

OR2014-18907

Dear Ms. Fillion:

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# 540259 (HCSO File# 14SO40077).

The Harris County Sheriff's Office (the "sheriff's office") received a request for the personnel files and other records of two named individuals. 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 representative sample of information.<sup>1</sup>

We note the submitted information includes court-filed documents that fall within the scope of section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Thus, the court-filed documents we have marked are subject to disclosure under section 552.022(a)(17). Although you seek to withhold the court-filed documents under section 552.108 of the Government Code, that section is a discretionary

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(17). Therefore, the sheriff's office may not withhold the court-filed documents under section 552.108. As you raise no other exception to disclosure for the court-filed documents, they must be released.

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). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and 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 (Tex. 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). You state the submitted deputy personnel records relate to two pending criminal prosecutions. You have provided an affidavit from the Harris County District Attorney's Office stating the deputies whose personnel records are at issue were involved in investigations which led to both pending cases and releasing the submitted personnel records would interfere with the pending prosecutions. Based on the submitted representations and our review, we conclude the release of the information not subject to section 552.022(a)(17) 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, the sheriff's office may withhold the submitted personnel records not subject to section 552.022(a)(17) 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,

A handwritten signature in black ink, appearing to be 'DO', with a long horizontal line extending to the right.

Daniel Olds  
Assistant Attorney General  
Open Records Division

DO/eb

Ref: ID# 540259

Enc. Submitted documents

c: Requestor  
(w/o enclosures)