



January 9, 2015

Ms. Susan Fillion
Assistant County Attorney
County of Harris
1200 Baker Street, 2nd Floor
Houston, Texas 77002-1206

OR2015-00391

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# 549857 (HCSO File No. 14SO600254).

The Harris County Sheriff's Office (the "sheriff's office") received a request for information related to a named peace officer's employment with the sheriff's office. 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.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The requestor asserts she has a right of access to the submitted information under the Sixth Amendment of the United States Constitution (the "Sixth Amendment"). The Sixth Amendment states:

¹We 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 that those records contain substantially different types of information than that submitted to this office.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. Amend. VI. Thus, in our system of justice, the Sixth Amendment provides the accused in “all criminal prosecutions” is entitled to certain rights, including the right to counsel, the right to be informed of the nature and cause of the accusation, the right to compulsory process to obtain defense witnesses, and the opportunity to cross-examine witnesses for the prosecution. *See Fareta v. California*, 422 U.S. 806, 818 (1975) (stating right to be informed of nature and cause of accusation, right to counsel, right of confrontation, and right to compulsory process are basic to criminal justice system and fundamental rights); *see also Gideon v. Wainwright*, 372 U.S. 335 (1963) (right to counsel); *Pointer v. Texas*, 380 U.S. 400 (1965) (right of confrontation); *Washington v. Texas*, 388 U.S. 14 (1967) (right to compulsory process); *Barker v. Wingo*, 407 U.S. 514 (1972) (right to speedy trial). However, here, the requestor is seeking information pursuant to the Act. As the Sixth Amendment guarantees the rights of an accused in criminal proceedings, it is not implicated in the context of a request for information under the Act, and, consequently, does not afford the requestor a right of access to the submitted information.

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). 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). However, you state, and provide documentation demonstrating, the submitted information relates to an ongoing criminal investigation and prosecution, and that the personnel records at issue pertain to an officer who is involved in the investigation and will be the state’s witness in the prosecution. Based upon this representation, we conclude the release of the submitted 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). Thus, we conclude section 552.108(a)(1) is applicable to the submitted information. Therefore, the sheriff's office may withhold the submitted information 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, 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 549857

Enc. Submitted documents

c: Requestor
(w/o enclosures)