



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2015

Ms. Susan Fillion
Assistant County Attorney
Harris County Sheriff's Office
1200 Baker Street, 2nd Floor
Houston, Texas 77002

OR2015-15103

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# 572908 (HCSO File Nos. 14SO600622 and 14SO600655).

The Harris County Sheriff's Office (the "sheriff's office") received two requests for the personnel file for a named deputy. 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 Additionally, we have considered comments from a representative of one of the requestors. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

We understand one of the requestors to argue the sheriff's office has an obligation to disclose the submitted information to her, as defense counsel in a possible criminal prosecution, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and, thus, the sheriff's office may not

¹We assume that 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.

withhold this information under the Act. In *Brady*, the United States Supreme Court held the prosecution is required to provide the defense with all potentially exculpatory evidence. 373 U.S. at 87. However, we note *Brady* addresses prosecutorial requirements and does not affect the requirements outlined in the Act. Here, the sheriff's office is not the prosecution in the case at issue. Furthermore, the requestor submitted her request for information to the sheriff's office pursuant to the Act. Accordingly, we will address the applicability of the Act to 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)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, Exhibit B consists of personnel records pertaining to a peace officer. Section 552.108 is generally not applicable to purely administrative records that do 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. 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 Exhibit B pertains to pending criminal investigations and prosecutions. Furthermore, you have provided documentation showing the officer whose personnel records are at issue was an officer involved in the incident that forms the basis of the pending investigations and prosecutions. Based on your representations, we conclude release of Exhibit B 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, the sheriff's office may withhold Exhibit B 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,

A handwritten signature in black ink that reads "Mili Gosar". The signature is fluid and cursive, with the first name "Mili" and last name "Gosar" clearly distinguishable.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 572908

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)