



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 17, 2019

Mr. Robert E. Etlinger
Assistant County Attorney
Guadalupe County
211 West Court Street
Seguin, Texas 78155-5779

OR2019-10295

Dear Mr. Etlinger:

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# 759858.

The Guadalupe County Elections Office (the "county") received two requests from the same requestor for information related to a specified voters list. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ Additionally, you state release of the submitted information may implicate the interests of the Office of the Attorney General ("OAG"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the OAG. We have considered the submitted arguments 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[.]" *Id.* § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A);

¹Although you do not cite to section 552.108 of the Government Code in your brief to this office, we understand you to raise this section based on the substance of your argument.

Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). Section 552.108 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 non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The OAG states the submitted information relates to a pending criminal investigation with the OAG's Election Fraud Section. Based upon this representation and our review, we find 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, section 552.108(a)(1) is applicable to the information at issue. Accordingly, the county may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the OAG.²

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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/jxd

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 759858

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)