



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2019

Mr. John Feldt
Assistant District Attorney
Denton County
P.O. Box 2344
Denton, Texas 76202

OR2019-10519

Dear Mr. Feldt:

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# 759983 (PIR #19-134 and #19-136).

Denton County (the "county") received two requests from the same requestor for information related to a specified advisory received from the Secretary of State's Office, including communications related to the advisory, a specified list, the replacement list, and the number of individuals removed from the first list. We understand the county will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² We have also received comments from the Office of the Attorney General ("OAG"), raising sections 552.103 and 552.108 of the Government Code for the information at issue. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.³

¹Section 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).

²Although you failed to timely raise section 552.130 of the Government Code, because section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See* Gov't Code §§ 552.007, .302, .352.

³We 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.

Initially, you state that it would require “research, analysis, or compilation of data not already in existence” in order for the county to respond to a portion of the second request. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ dismissed); see Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require a governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. See Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). Therefore, while the county is not required to create documents that did not exist at the time of the requests, documents from which this information may be derived are responsive to these requests. As you have submitted information responsive to the requests, we understand the county has made a good faith effort to relate the requests to information within its possession.

Section 552.108(a)(1) of the Government Code exempts 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 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); *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 governmental body has custody of 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’s Election Fraud Section states the submitted information relates to a pending criminal investigation, and release of the information at issue would interfere with the investigation of the case. 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 refused 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.⁴

⁴As our ruling is dispositive, we need not address your arguments against disclosure.

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,



Deborah Southerland
Attorney
Open Records Division

DS/gw

Ref: ID# 759983

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)