



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2019

Ms. ML Calcote
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2019-23318

Dear Ms. Calcote:

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# 781676 (DPS PIR# 19-2407).

The Texas Department of Public Safety (the "department") received a request for specified correspondence between the department and three state agencies during a specified time period. The department states it is withholding some information in accordance with Open Record Letter No. 2019-10238 (2019). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). The department claims the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, 552.130, and 552.139 of the Government Code. Additionally, the department states it notified the Office of the Governor (the "OOG"), the Secretary of State's Office (the "SOS"), and the Office of the Attorney General (the "OAG") of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *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 OOG, the SOS,

and the OAG. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency . . . 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 asserting section 552.108(a)(1) must explain how and why 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. 1976). 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)*. Thus, where an 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 has advised this office the information at issue relates to an open criminal investigation conducted by the OAG’s Election Fraud Section of the Criminal Prosecutions Division. Further, the OAG states release of this information would interfere with the pending investigation. Based upon these representations, 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, section 552.108(a)(1) is applicable to the submitted information. Accordingly, the department 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.

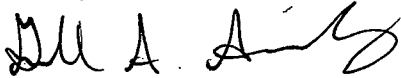
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open->

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

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

government/members-public/what-expect-after-ruling-issued or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/gw

Ref: ID# 781676

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 3 Third Parties
(w/o enclosures)