



The Office of Vince Ryan
County Attorney

August 30, 2016

Honorable Ken Paxton
Attorney General of Texas
Open Records Division
P. O. Box 12548
Austin, Texas 78711

via Certified Mail/ Return Receipt Requested

Attention: Open Records Committee

Re: Public Information Request by Paul Morgan to the Office of Harris County Constable, Precinct 4 for: 1) the names of officers who handled Precinct 4's property/evidence room, and all personnel under their management and supervision from 8/22/2014 to 8/22/2016; 2) a list of all evidence that has been destroyed, altered, or is otherwise missing from 8/22/2014 to 8/22/2016; 3) a reason why evidence was destroyed; 4) the name of the officer who destroyed the evidence in State v. Bellamy, the reason for the destruction of evidence, the reason why the bag is missing, and the reason why these pieces of evidence were destroyed and labeled missing; 4) all policies and procedures Precinct 4 follows regarding custody, control, and management of evidence; 5) all custody logs from 8/22/2014 to 8/22/2016; and 6) internal investigation reports for any officers who have destroyed or misplaced evidence. *C. A. File No. 16PIA0493*

Dear Attorney General Paxton:

On August 22, 2016, the Office of Harris County Constable, Precinct 4 received a written request for the above-referenced information in accordance with the Texas Public Information Act (the Act), Tex. Gov't Code § 552.001, *et seq.* We believe the requested information is not subject to disclosure under Section 552.108 of the Act, and any other applicable statutes or cases identified under the Act or other Texas law. A memorandum brief and the information for which exceptions to disclosure are sought are enclosed. Please provide us with your opinion regarding this matter.

The requestor is being copied with this letter and is being notified that if she should have any questions regarding the Act, she may contact the Office of the Attorney General's Hotline at (877) 673-6839.

Yours very truly,

VINCE RYAN
County Attorney

By: Kristen Lee
Kristen Lee
Assistant County Attorney

VR/KL/gp

cc: Paul Morgan
917 Franklin St., Floor 4
Houston, TX 77002 ✓

MEMORANDUM BRIEF

On August 23, 2016, the Office of Harris County Constable, Precinct 4 (the Constable's Office) received a request from Paul Morgan for 1) the names of officers who handled Precinct 4's property/evidence room, and all personnel under their management and supervision from 8/22/2014 to 8/22/2016; 2) a list of all evidence that has been destroyed, altered, or is otherwise missing from 8/22/2014 to 8/22/2016; 3) a reason why evidence was destroyed; 4) the name of the officer who destroyed the evidence in State v. Bellamy, the reason for the destruction of evidence, the reason why the bag is missing, and the reason why these pieces of evidence were destroyed and labeled missing; 4) all policies and procedures Precinct 4 follows regarding custody, control, and management of evidence; 5) all custody logs from 8/22/2014 to 8/22/2016; and 6) internal investigation reports for any officers who have destroyed or misplaced evidence. This request is enclosed as Exhibit A. On behalf of the Constable's Office, the Office of the Harris County Attorney is submitting this memorandum brief and the responsive records and information for which an exception to disclosure is sought, pursuant to the Texas Public Information Act (the Act), Tex. Gov't Code Ann. § 552.001, *et seq.* The responsive records and information for which an exception is sought are attached as Exhibit B.

The Act defines public information as information that is collected, assembled, or maintained under a law or ordinance, or in connection with the transaction of official business: (1) by a governmental body; (2) for a governmental body under certain circumstances; or (3) by an official or employee in an official capacity. Tex. Gov't Code § 552.002. Public information must be disclosed unless the information falls within one of the Act's specific exceptions to disclosure. Tex. Gov't Code § 552.001; Tex. Att'y Gen. Op. Nos. JM-511 (1988), JM-363 (1983).

The information requested includes documents that fall under section 552.108, and any other applicable statute and cases identified of the Act, and should be excepted from disclosure.

Discussion

The information requested includes documents that fall under section 552.108, the "law enforcement exception." That exception provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Tex. Gov't Code § 552.108.

The requested documents and information relate directly to an open and ongoing criminal investigation. The Constable's Office has advised that release of the requested information would interfere with the pending investigation and with the detection, investigation, and prosecution of crime, as indicated in the attached affidavit, enclosed as Exhibit C. The affiant,

Lieutenant Christian Nicholson, asserts the criminal investigation is incomplete and considered open and ongoing at this time. On behalf of the Constable's Office, Lt. Nicholson opposes the disclosure of the requested documents. The Attorney General has consistently ruled that this exception to the Act is designed to protect law enforcement interests during the investigation and prosecution of criminal acts. Thus, section 552.108(a)(1) is applicable, and the documents should be withheld.

For the above stated reasons and authority, as well as other applicable law, the records and information in Exhibit B should be excepted from disclosure in their entirety or at least in part.