



October 6, 1999

Ms. Kimberly D. Gardner
P.O. Box 311734
New Braunfels, Texas 78731

OR99-2844

Dear Ms. Gardner:

On behalf of the City of Kenedy (the "city"), you ask this office to reconsider our decision in Open Records Letter No. 99-2041(1999).¹ Your request for reconsideration was assigned ID# 128649.

Open Records Letter No. 99-2041 (1999) determined that the city may not withhold a requested investigation report from disclosure based on section 552.108 of the Government Code because the city failed to establish the applicability of the exception. You now have learned that in Open Records Letter No. 99-2028 (1999), this office ruled that the Karnes County District Attorney's Office (the "district attorney") may withhold from disclosure based on Government Code section 552.108(a)(2) the same information at issue in Open Records Letter No. 99-2041.

The different rulings can be explained by the fact that, unlike the city, the district attorney met its burden under the exception by timely informing this office of the status of the related case. In its request for a decision, the city failed to inform this office of the status of the case to which the information requested relates. The Public Information Act requires a governmental body to timely establish the applicability of the exceptions it raises. Gov't Code § 552.301(b)(1), .302; *see* Open Records Decision No. 542 (1990) (burden of governmental body to establish applicability of claimed exceptions). In order to succeed on a section 552.108(a)(2) claim, a governmental body must demonstrate that the requested

¹The Seventy-sixth Legislature recently passed Senate Bill 1851. Section 20 of Senate Bill 1851 amends section 552.301 of the Government Code by adding subsection (f). Section (f), which became effective September 1, 1999, prohibits a governmental body from asking for an attorney general ruling if the governmental body has received a ruling on the precise information at issue and the attorney general or a court determined that the information is public information under the PIA. Act of May 25, 1999, 76th Leg., R.S., S.B. 1851, § 20 (codified at Gov't Code 552.301). However, the request before us is governed by the law in effect on the date the City of Kenedy requested a ruling from this office. *Id.* § 36.

information relates to a concluded criminal investigation that has come to some type of final result other than a conviction or deferred adjudication. Gov't Code 552.108(a)(2). The city should have timely informed this office of the status of the case in order to withhold therequested report under section 552.108(a)(2). *See* Open Records Decision No. 586 (1991) (waiver of law enforcement exception). We, therefore, affirm Open Records Letter No. 99-2041.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/nc

Ref.: ID# 128649

cc: Ms. Linda Schmidt
124 Bluebonnet
Kenedy, Texas 78119