



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2009

Mr. Jefferson B. Davis
Clardy, Davis & Knowles, LLP
Attorney for Nacogdoches County Sheriff's Department
P.O. Box 635426
Nacogdoches, Texas 75961

OR2009-18209

Dear Mr. Davis:

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# 365670.

The Nacogdoches County Sheriff's Office (the "sheriff"), which you represent, received a request for information pertaining to a specified incident, including any video or audio recordings pertaining to the incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code provides in relevant part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must sufficiently explain how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) protects law enforcement records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. You state that the submitted information pertains to a criminal investigation by the sheriff that has been concluded and that did not result in conviction or deferred adjudication because the Nacogdoches County Attorney's Office is not prosecuting the suspect. Based on your

representations and our review, we find that section 552.108(a)(2) is generally applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes the location of the crime. Open Records Decision No. 127 (summarizing types of information considered to be basic information). We note that a portion of the basic information may be excepted from disclosure under section 552.1175 of the Government Code, which provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). The basic information includes the home address of a peace officer who is not an employee of the sheriff. To the extent that individual is a currently licensed peace officer who elects to restrict public access to his home address, the sheriff must withhold the information we have marked from the basic information under section 552.1175. To the extent the individual is not a currently licensed peace officer or does not elect to restrict public access to his home address, the sheriff may not withhold the marked information under section 552.1175.

In summary, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(2).¹ In releasing the basic information, to the extent the individual is a currently licensed peace officer who elects to restrict public access to his home address, the sheriff must withhold the information we have marked under section 552.1175. To the extent the individual is not a currently licensed peace officer or does not elect to restrict public access to his home address, the sheriff may not withhold the marked information under section 552.1175.

¹We note that the sheriff has the discretion to release all or part of the remaining submitted information that is not otherwise confidential by law. Gov't Code § 552.007.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eb

Ref: ID# 365670

Enc. Submitted documents

c: Requestor
(w/o enclosures)