



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2010

Ms. Vivian J. Harvey
Assistant County Attorney
Henderson County
100 East Tyler Street
Athens, Texas 75751

OR2010-07015

Dear Ms. Harvey:

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# 379487.

The Henderson County Sheriff's Office (the "sheriff") received a request for information relating to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108(a)(2) 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 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . 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 claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *Id.*; see also *id.* § 552.301(e)(1)(A). You do not state the investigation of this matter is concluded. You inform us the submitted information pertains to a criminal investigation "that *has not* resulted in a conviction or deferred adjudication" (emphasis added). You

further state, “[t]o date, this case has not been filed, and . . . the investigation is suspended.” We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case “that *did not* result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2) (emphasis added). Although you state the investigation is suspended, the shortest possible statute of limitations for the offense in question is five years, which has not run. *See* Code Crim. Proc. art. 12.01(4)(A) (indictment or information on felony theft or robbery may be presented within five years from date of commission of offense, and not afterward). Because charges can be filed at any time prior to the expiration of the statute of limitations, you have failed to demonstrate this investigation concluded in a final result other than conviction or deferred adjudication. Therefore, the sheriff may not withhold any portion of the submitted information under section 552.108(a)(2) of the Government Code.

We note a portion of the submitted information is subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(2). Accordingly, the sheriff must withhold the Texas license plate number we have marked under section 552.130 of the Government Code.² As you raise no other exceptions to disclosure, the remaining information must be released.³

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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released contains confidential information to which the requestor, as the authorized representative of the person whose privacy is implicated by the release of the information, has a right of access. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the sheriff receives another request for this same information from a different requestor, then the sheriff should again seek a decision from this office.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 379487

Enc. Submitted documents

c: Requestor
(w/o enclosures)