



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2010

Mr. Leonard V. Schneider  
Ross, Banks, May, Cron & Cavin, P.C.  
For City of Magnolia  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2010-07524

Dear Mr. Schneider:

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# 380304.

The Magnolia Police Department (the "department"), which you represent, received a request for all complaints filed against the department during a specified time period.<sup>1</sup> You claim the submitted internal affairs investigation records are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You contend the submitted internal affairs records are protected by sections 552.108(a)(2) and 552.108(b)(2) of the Government Code, which provide:

(a) Information 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:

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<sup>1</sup>You state the department sought and received clarification from the requestor regarding the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

...

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

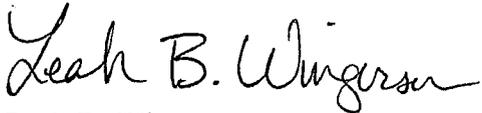
(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code §§ 552.108(a)(2), (b)(2). Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted records pertain to an internal affairs administrative investigation currently being conducted by the department concerning alleged misconduct by a department officer. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You argue that although the submitted records pertain to an administrative investigation, that investigation “is not completed and the end result may involve a criminal investigation.” By your own statements, however, you acknowledge a criminal investigation has not been, and may not be, initiated. You have not explained how a criminal investigation that has not begun could have concluded in a final result other than conviction or deferred adjudication. Consequently, we find you have failed to demonstrate the applicability of either section 552.108(a)(2) or section 552.108(b)(2) of the Government Code to the information at issue, and the information may not be withheld on those bases. As you have not claimed any other exceptions to disclosure, the submitted information must be released.

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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 380304

Enc. Submitted documents

c: Requestor  
(w/o enclosures)