



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2010

Ms. Diana Davis
Records Clerk
City of Harker Heights
402 Indian Trail
Harker Heights, Texas 76548

OR2010-08529

Dear Ms. 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# 382843.

The Harker Heights Police Department (the "department") received a request for a file related to a specified 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 excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code 552.108(a)(2). Section 552.108(b)(2) excepts "[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution. . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(b)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(2), .302(e)(1)(A).

You inform us the submitted information is related to a police investigation "that *has not* resulted in a conviction or deferred adjudication" (emphasis added). We note that section 552.108(a)(2) and section 552.108(b)(2) are applicable only if the information at issue is related to a *concluded* criminal case "that did not result in conviction or deferred

adjudication.” Gov’t Code § 552.108(a)(2), (b)(2) (emphasis added). Thus, having considered your representations, we find that you have not demonstrated that the submitted information falls within the scope of section 552.108(a)(2) or section 552.108(b)(2). *See id.* § 552.301(e)(1)(A). We therefore conclude that the department may not withhold any of the submitted information under section 552.108 of the Government Code. As you raise no further exceptions against disclosure, the remaining information must be released to the requestor.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 382843

Enc. Submitted documents

c: Requestor
(w/o enclosures)