



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 21, 2010

Mr. Leonard V. Schneider  
Liles Parker, P.L.L.C.  
Attorneys for the City of Magnolia  
525 East Sam Houston Parkway North, Suite 415  
Houston, Texas 77060

OR2010-09035

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# 383465.

The City of Splendora and the Splendora Police Department (collectively the "city"), which you represent, received three requests from the same requestor for any and all documents, information, instruments, writings, electronic media records, electronic records, film, indices, microfiche, computer records, and communications regarding certain named individuals from January 1, 2008 until April 1, 2010; a specified letter from August 17, 2009; and a copy of a specified complaint filed with the chief of police. 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.

Initially, we note you have only submitted two incident reports for our review. To the extent information responsive to the remainder of the requests, including the requested August 17, 2009 letter and specified complaint, existed when the requests were received, we assume that the city has released that information. If not, then any such information must be released at this time.<sup>1</sup> See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. -San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code §552.108(a)(1). 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)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 20092306 relates to an open criminal investigation by the Montgomery County District Attorney’s Office. Based on this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we find section 552.108(a)(1) is applicable to report number 20092306.<sup>2</sup>

Section 552.108(a)(2) 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). You state report number 08C000195 relates to a criminal investigation that did not result in conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to report number 08C000195.

We note, however, that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold report number 20092306 under section 552.108(a)(1) of the Government Code and report number 08C000195 under section 552.108(a)(2) of the Government Code.

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.

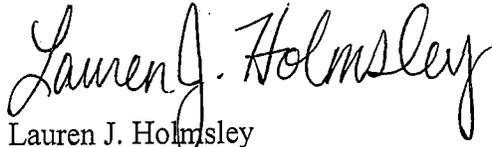
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>2</sup>As our ruling is dispositive with respect to this information, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Lauren J. Holmsley". The signature is written in black ink and is positioned above the printed name.

Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/jb

Ref: ID# 383465

Enc. Submitted documents

c: Requestor  
(w/o enclosures)