



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2010

Mr. Brandon S. Shelby
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106

OR2010-17011

Dear Mr. Shelby:

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# 400249.

The City of Sherman (the "city") received a request for a specified incident report. You claim 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 a portion of the submitted information is not responsive to the instant request for information because it does not pertain to the specified incident report. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request.

You claim the responsive information is excepted from disclosure under section 552.108(b)(2) of the Government Code, which provides, in pertinent part:

(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 the requirements of Section 552.021 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(b)(2). A governmental body claiming subsection 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You quote section 552.108(b)(2) and state the information at issue is excepted from disclosure under that exception. However, you state although the submitted information pertains to an incident that is “not a current pending criminal investigation, it occurred on 7/2/2009 and, thus[,] has not exceeded the statutory limits for prosecution.” We note section 552.108(b)(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(b)(2). Because you have provided this office with conflicting representations, we find you have failed to demonstrate the information at issue relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Accordingly, the department may not withhold the responsive information under subsection 552.108(b)(2) of the Government Code. As you raise no further exceptions to disclosure, the responsive 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 400249

Enc. Submitted documents

c: Requestor
(w/o enclosures)