



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2010

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2010-17879

Dear Ms. Messer:

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# 401401.

The City of Abilene (the "city") received a request for 1) communications between Community Enhancement and a named individual and contractor related to a specified violation and 2) notices of violations of a specified ordinance issued during June 2010 by Community Enhancement.¹ You state the city has released some of the requested information to the requestor. 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.

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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. Section 552.108 applies only to records created by an agency, or

¹We note that the city asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981).

You state the submitted information pertains to violations of chapter 19 article II section 19-15 of the city's code of ordinances, a class C misdemeanor, that were investigated by the city's Community Enhancement Division. You inform this office that the city's Community Enhancement Division enforces the applicable provision of the city's code of ordinances. Based on this representation and our review, we find the city's Community Enhancement Division to be a law enforcement agency for the purposes of section 552.108. In addition, you state the investigations into these violations have concluded and did not result in convictions or deferred adjudications. Accordingly, we conclude that the city has demonstrated that the information at issue relates to a criminal investigation that did not result in conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.

We note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). With the exception of basic information, which must be released, the city may withhold the submitted information 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, 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 401401

Enc. Submitted documents

c: Requestor
(w/o enclosures)