



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2010

Mr. Jason Ray
Riggs, Aleshire & Ray
700 Lavaca, Suite 920
Austin, Texas 78701

OR2010-19027

Dear Mr. Ray:

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# 403940.

The Office of the District Attorney for the 63rd Judicial District (the "district attorney"), which you represent, received a request for a specified incident report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(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:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;
- (2) 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[.]

¹Although you raise section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, section 552.101 does not encompass other exceptions in the Act.

Gov't Code § 552.108(a). We note section 552.108(a)(1) and section 552.108(a)(2) typically encompass two mutually exclusive types of information. Section 552.108(a)(1) generally protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A). You represent that the underlying case that was the subject of the incident report at issue was presented to a grand jury and no billed. Thus, we understand you to assert section 552.108(a)(2) applies to the submitted information. However, you also represent that release of the submitted information would unduly interfere with crime prevention and prosecution. Accordingly, we understand you to assert section 552.108(a)(1) also applies to the submitted information. Because you have provided this office with conflicting representations, we find you have not demonstrated the applicability of section 552.108 to the submitted information, and such information may not be withheld under section 552.108 of the Government Code. As you raise not further 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_or1.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 H. Holland
Assistant Attorney General
Open Records Division

THH/em

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Enc. Submitted documents

c: Requestor
(w/o enclosures)