



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 24, 2011

Mr. Leonard V. Schneider  
Attorney for City of Huntsville  
Liles Parker, PLLC  
525 North Sam Houston Parkway East, Suite 415  
Houston, Texas 77060

OR2011-01148

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# 407029.

The City of Huntsville (the "city"), which you represent, received a request for information regarding a specific case, specifically information that (1) was turned over to the district attorney, (2) was not turned over to the district attorney, (3) relates to the action taken on location and apprehension of the suspect, (4) constitutes communications to the district attorney by specific police officers, and (5) relates to racial discrimination regarding one of the specified officers. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the claimed exception and reviewed the submitted information.

As a preliminary matter, you state that the city does not have any responsive information as to items 3 through 5 of the request. We note that the Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266

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<sup>1</sup>Although you also cite to section 552.101 of the Government Code, you provide no arguments in support of withholding the submitted information under this exception. Therefore, we do not address the applicability of section 552.101 to the submitted information. *See Gov't Code §§ 552.301(e)(1)(A), .302.*

(Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

Section 552.108(a)(2) 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:

...

(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.

Gov't Code § 552.108(a)(2). A governmental body claiming 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 id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted information pertains to an investigation of an incident that the district attorney declined to prosecute. Thus, you contend the submitted information relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) applies to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). 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. Civ. App.—Houston [14th Dist.] 1975) (summarizing types of information considered to be basic information), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Open Records Decision No. 127 (1976). Thus, with the exception of basic information, 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](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,

A handwritten signature in cursive script that reads "Misty J. Barham".

Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID# 407029

Enc. Submitted documents

c: Requestor  
(w/o enclosures)