



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2011

Mr. Cody L. Cofer
Henderson County Attorney's Office
100 East Tyler Street, Room 100
Athens, Texas 75751

OR2011-03270

Dear Mr. Cofer:

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# 410859.

The Henderson County Sheriff's Office (the "sheriff") received a request for the video recording of a specified incident involving a named individual and occurring in the Henderson County Jail. You claim the sheriff need not comply with the request pursuant to section 552.028 of the Government Code. Alternatively, you claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides, in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

See Gov't Code § 552.028(a)-(b). You assert because the requestor is the mother of the named individual, she is acting as the agent of the named individual in making the instant request. However, the fact the requestor is the individual's mother does not in itself establish she submitted the request as an agent of the individual. You further state the named individual is not currently in custody. *See id.* § 552.028(c) ("correctional facility" is a place for the confinement of a person arrested for or charged with a criminal offense"). However, you do not indicate the named individual was in custody at the time the request for information was received by the sheriff. Therefore, we find you have failed to demonstrate the request for information was submitted by an agent of an individual who is imprisoned or confined in a correctional facility. Thus, we cannot conclude section 552.028 is applicable in this instance. Accordingly, we find the sheriff must accept and comply with the instant request, and we will address your argument against disclosure of the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(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 state the submitted information is part of a closed investigation that did not result in a criminal conviction or deferred adjudication. Based on your representation and our review, we find the sheriff 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tf

Ref: ID# 410859

Enc. Submitted documents

c: Requestor
(w/o enclosures)