



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2011

Chief James S. Kelley  
Chief of Police  
Sweetwater Police Department  
P.O. Box 450  
Sweetwater, Texas 79556

OR2011-09992

Dear Chief Kelley:

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# 423677.

The Sweetwater Police Department (the "department") received a request for a copy of the police reports and protective order the requestor took out against her husband around January 20, 2011. You state the department does not have the requested protective order because the Nolan County Attorney (the "county attorney") refused to file one in this instance. 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.

You claim the submitted incident report is protected by subsections 552.108(a)(2) and 552.108(b)(2) of the Government Code, which provide:

- (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 the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(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 [required public disclosure] 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(a)(2), (b)(2). Subsections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the county attorney has refused to accept the incident report from the department "at this time." Based on this statement, we find you have failed to explain how the incident report relates to a case that has concluded in a final result. Accordingly, we conclude you have failed to demonstrate the applicability of subsection 552.108(a)(2) or subsection 552.108(b)(2) of the Government Code to the incident report, and it must be released.

You assert subsection 552.108(b)(3)(B) for the submitted letter from the county attorney. This section provides:

(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 [required public disclosure] if:

...

(3) the internal record or notation:

...

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(b)(3)(B). The letter contains the county attorney's legal reasoning and mental impressions regarding this case. Accordingly, we find subsection 552.108(b)(3)(B) of the Government Code is applicable to the portion of the letter we marked and the department may withhold this information under that section. The remaining 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](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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eb

Ref: ID# 423677

Enc. Submitted documents

c: Requestor  
(w/o enclosures)