



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2011

Mr. Reg Hargrove
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2011-13032

Dear Mr. Hargrove:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 430965 (PIR No. 11-31213).

The Office of the Attorney General (the "OAG") received a request for the investigation concerning the City of Burkburnett, City Manager Michael Slye, and Police Chief Michael Tracey. The OAG asserts the information is excepted from disclosure under sections 552.108 and 552.139 of the Government Code. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted sample of information.¹

First, the OAG explains a recording responsive to this request is the subject of Open Records Letter No. 2010-04142 (2010). In Open Records Letter No. 2011-04142, we concluded the

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

OAG may withhold the information under section 552.108(a)(2) of the Government Code. As the four criteria for a “previous determination” established by this office in Open Records Decision No. 673 (2001) have been met, the OAG may withhold the information in accordance with Open Records Letter No. 2011-04142.²

Next, we consider the OAG’s section 552.108(a)(2) assertion for the remaining information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 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. The OAG explains Exhibit B pertains to a case investigated by its Law Enforcement Division that concluded and did not result in conviction or deferred adjudication. Thus, the OAG has shown the applicability of section 552.108(a)(2) to Exhibit B.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, with the exception of the basic front page offense and arrest information, the OAG may withhold Exhibit B from disclosure based on section 552.108(a)(2). Because section 552.108 is dispositive, we do not address the OAG’s section 552.139 assertion.

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

²The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

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 black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/akg

Ref: ID# 430965

Enc: Submitted documents

c: Requestor
(w/o enclosures)