



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2011

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2011-14261

Dear Ms. Rangel:

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# 431728.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for radio broadcasts and dash cam video recordings pertaining to a specified accident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request for information because it does not consist of radio broadcasts or dash cam video recordings as specified in the request. This ruling does not address the public availability of non-responsive information, and the sheriff need not release non-responsive information in response to this request.

Next, we note the responsive information is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,

except as provided by Section 552.108.” Gov’t Code § 552.022(a)(1). In this instance, the information at issue is part of a completed investigation. Accordingly, the information at issue must be released under section 552.022(a)(1) of the Government Code, unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception that protects a governmental body’s interest and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex.App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body’s position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the sheriff may not withhold the responsive information under section 552.103 of the Government Code. However, because sections 552.101 and 552.130 of the Government Code are other law for purposes of section 552.022 and information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider the applicability of these exceptions to the responsive information.

Section 552.108(a)(2) of the Government Code 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 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a concluded criminal case that did not result in a conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable to the submitted information. Accordingly, the sheriff may withhold the responsive information under section 552.108(a)(2) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Paige Lay". The signature is written in dark ink and is positioned above the printed name.

Paige Lay
Assistant Attorney General
Open Records Division

PL/akg

Ref: ID# 431728

Enc. Submitted documents

cc: Requestor
(w/o enclosures)