



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2011

Ms. Tiffany Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2011-15747

Dear Ms. Evans:

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# 434271 (GC No. 18823).

The Houston Emergency Center (the "center") received a request for a copy of the 9-1-1 call pertaining to a specified incident. You claim the submitted 9-1-1 recording 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 raise section 552.108(a)(1) of the Government Code for the 9-1-1 recording. Section 552.108 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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(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[.]

Gov't Code § 552.108(a)(1)-(2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims 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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4–5 (1987).

In this instance, you represent the Houston Police Department (the “department”) has advised you that the 9-1-1 recording pertains to an inactive criminal investigation which may be reactivated once additional leads are developed. Thus, you and the department argue this information should be excepted from disclosure under section 552.108(a)(1) because release of the information would interfere with the detection and investigation of crime. We note, however, that in response to a previous request to the department for its incident report pertaining to the same incident in this request, the department raised section 552.108(a)(2) for the information. The department informed our office that the incident report pertained to a criminal investigation which did not result in conviction or deferred adjudication. Thus, this office issued Open Records Letter No. 2011-12071 (2011) to the department, which found that the incident report may be withheld under section 552.108(a)(2). Accordingly, because the department now claims the investigation into the incident is open, the department has provided contradictory representations to this office. Therefore, the department has not demonstrated the applicability of section 552.108(a)(1) to the 9-1-1 recording. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Thus, the center may not withhold the 9-1-1 recording under section 552.108(a)(1) of the Government Code. As you raise no other exceptions to disclosure of this information, it 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,

A handwritten signature in black ink, appearing to read 'K. Conyer', written over a horizontal line.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/agn

Ref: ID# 434271

Enc. Submitted documents

c: Requestor  
(w/o enclosures)