



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2011

Mr. Gordon K. LeMaire
Assistant District Attorney
Cherokee County District Attorney's Office
P.O. Box 450
Rusk, Texas 75785

OR2011-19066

Dear Mr. LeMaire:

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# 440321.

The Cherokee County District Attorney's Office (the "district attorney") received a request for e-mails relating to the alleged abuse of official capacity by a named individual. 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.

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* 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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You claim the information at issue is excepted from disclosure under section 552.108(a)(2) and you cite the language of that section. You explain at a special session of a grand jury meeting, the underlying case was no billed. However, you inform us the statute of limitations for the underlying offense has not run, and you state

“[t]his case has *not been closed* due to the possibility of new evidence” (emphasis added). We note section 552.108(a)(2) is applicable only if the information at issue is related to a *concluded* criminal case “that did not result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2). Upon review, we find you have failed to demonstrate the information at issue relates to a concluded criminal investigation that did not result in conviction or deferred adjudication. Thus, we find you have not demonstrated the applicability of section 552.108(a)(2) to the submitted information. *See id.* § 552.301(e)(1)(A). Accordingly, the district attorney may not withhold the submitted information under subsection 552.108(a)(2) of the Government Code.

We note the submitted e-mails contain information that is subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). Therefore, the district attorney must withhold the e-mail addresses within the submitted information, a representative sample of which we have marked, under section 552.137 of the Government Code, unless their owners have affirmatively consented to their public disclosure or the e-mails are excluded by subsection 552.137(c).² The remaining submitted 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, 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 "Claire Morris Sloan". The signature is written in black ink and includes a stylized flourish at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 440321

Enc. Submitted documents

c: Requestor
(w/o enclosures)