



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2012

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

OR2012-00916A

Dear Ms. Evans:

You ask this office to reconsider Open Records Letter No. 2012-00916 (2012), which this office issued on January 20, 2012. We have examined this ruling and determined that an error was made in its issuance. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2012-00916 and serves as the correct ruling. This ruling was assigned ID# 449414.

The City of Houston (the "city") received a request for a specified incident report, as well as the "copies and transcript of [the] 911 call" the requestor made pertaining to a separate incident. You state that the Houston Emergency Center informs you that there are no records pertaining to the incident for which the 911 information was requested due to the expiration of the retention period.¹ You claim that 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)

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to an investigation by the city's police department that concluded in an outcome other than conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, we note 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 449414

Enc. Submitted documents

c: Requestor
(w/o enclosures)