



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2012

Mr. Bill Delmore
Assistant District Attorney
9th Judicial District
207 West Phillips, Second Floor
Conroe, Texas 77301

OR2012-05702

Dear Mr. Delmore:

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# 451287.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for all information regarding any cases filed against the requestor by the City of Montgomery or the City of Montgomery Police Department. You state you will release basic information to the requestor.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 of the Government Code 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]

¹See Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered basic information).

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect 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) (governmental body must provide comments explaining why claimed exceptions to disclosure apply).

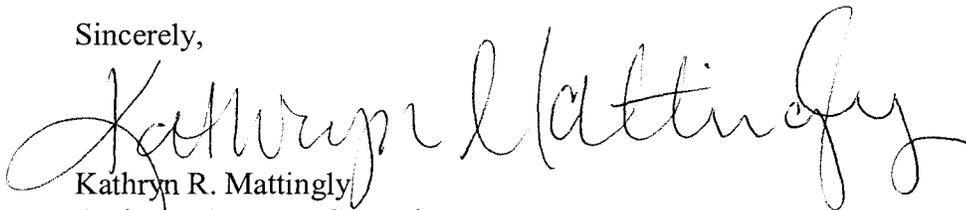
You state the submitted information pertains to a closed criminal investigation that did not result in a conviction or a deferred adjudication, and is, therefore, excepted from disclosure under subsections 552.108(a)(2) and 552.108(b)(2). However, you also cite subsections 552.108(a)(1) and 552.108(b)(1) and state the submitted information pertains to a pending criminal investigation, and its release would interfere with the investigation and prosecution of crime. Because you have provided this office with contradictory representations, we find you have failed to demonstrate the applicability of section 552.108 to the submitted information. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the district attorney's office may not withhold the submitted information under

section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the district attorney's office must release the submitted information.²

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 451287

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the submitted information contains information to which the requestor has a right of access. See Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the district attorney's office receives another request for this information from a different requestor, the district attorney's office must again seek a ruling from this office.