



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2012

Mr. Charles V. Brancaccio
Assistant County Attorney
Johnson County
204 South Buffalo Avenue, Suite 410
Cleburne, Texas 76033-5404

OR2012-08403

Dear Mr. Brancaccio:

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# 445226.

The Johnson County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information pertaining to a specified incident involving two named individuals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state prior to the sheriff's office's receipt of the instant requests for information, the information submitted as Exhibit D was disclosed to the public. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988).* Accordingly, the sheriff's office may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. You seek to withhold the previously released information under section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code § 552.007; Open Records Decision No. 177 (1977)* (governmental body may waive statutory

predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Therefore, the sheriff's office may not withhold Exhibit D under section 552.108. As you raise no further exceptions to disclosure for the information at issue, it must be released to the requestors.

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 state the remaining information is part of a concluded investigation that did not result in conviction or deferred adjudication and in which the statute of limitations has run. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the remaining information.

However, 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, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.¹

In summary, with the exception of Exhibit D, which must be released pursuant to section 552.007, and the basic information, which must be released, the sheriff's office may withhold the submitted information under section 552.108(a)(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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of the information at issue.

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 "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 455226

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)