



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2012

Ms. Myrna S. Reingold
Legal Department
Galveston County
722 Moody 5th Floor
Galveston, Texas 77550-2317

OR2012-09309

Dear Ms. Reingold:

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# 456348.

The Galveston County Tax Assessor and Collector (the "tax assessor's office") received a request for all correspondence pertaining to the processing of the requestor's complaint.¹ You state you do not have information responsive to a portion of the request.² You indicate you have released some of the information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107, 552.108, 552.111, 552.117,

¹We note the tax assessor's office received the written request for information on April 2, 2012. The receipt of this request triggered the procedural deadlines of section 552.301 of the Government Code. See Gov't Code § 552.301.

²We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

552.130, 552.137, and 552.147 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” Gov’t Code § 552.108(a)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 applies to information held by a “law enforcement agency.” However, section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Thus, where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to a concluded criminal case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the criminal case that has reached a conclusion other than a conviction or a deferred adjudication and a representation from the law enforcement agency that it wishes to have the information withheld. You state, and have provided documentation from the district attorney’s office stating, the district attorney’s office objects to release of the submitted information because it is related to a concluded investigation that did not result in a conviction or a deferred adjudication. Based on these representations and our review, we conclude the tax assessor’s office may withhold the submitted information under section 552.108(a)(2) of the Government Code.⁴

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,

³Although you raise section 552.101 of the Government Code, you have not submitted any arguments explaining the applicability of this section. Therefore, we assume the tax assessor’s office has withdrawn this exception. *See* Gov’t Code §§ 552.301, .302. Further, the tax assessor’s office did not raise section 552.117 of the Government Code as an exception to disclosure within ten business days of the date the tax assessor’s office received the request. *See id.* §§ 552.301(b), .302. However, because section 552.117 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will consider your claim under section 552.117, notwithstanding the tax assessor’s office’s violation of section 552.301(b) in raising this exception. *See id.* § 552.302.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 'Nneka Kanu', written over a faint circular stamp or watermark.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 456348

Enc. Submitted documents

c: Requestor
(w/o enclosures)