



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2012

Ms. Jeannette Kimball
Department of Records
Anderson County Sheriff's Office
1200 East Lacy
Palestine, Texas 75801

OR2012-09386

Dear Ms. Kimball:

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# 456515.

The Anderson County Sheriff's Office (the "sheriff's office") received a request for a specified pistol and all reports, photographs, and documentation related to a specified investigation. 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.

Initially, we note the requestor asks for a specified pistol in the sheriff's office's possession to be returned to her. The Act is applicable to "public information," which is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body, and the governmental body owns the information or has a right of access to it. *See Gov't Code § 552.002.* This office has ruled, however, that tangible physical items are not "information," as that term is contemplated under the Act. *See Open Records Decision No. 581 (1990).* Therefore, the pistol is not public information for purposes of section 552.002 of the Government Code, and the Act does not require the sheriff's office to make the pistol available to the requestor. *See Gov't Code §§ 552.002, .021.*

You raise section 552.108 of the Government Code, which 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]

(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[.]

Gov't Code § 552.108(a)(1)-(2). Subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably show that the exception is applicable to the requested information by explaining how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate the submitted information relates to an ongoing criminal investigation. Accordingly, we understand you to raise section 552.108(a)(1). Based upon your representation, we conclude that the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(1) 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,

A handwritten signature in black ink, appearing to read 'Nreka Kanu', written over a circular scribble.

Nreka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 456515

Enc. Submitted documents

c: Requestor
(w/o enclosures)