



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2012

Mr. Jason D. King
Counsel for the City of Balch Springs
Akers & Boulware-Wells, L.L.P.
Building E, Suite 102
6618 Sitio Del Rio Boulevard
Austin, Texas 78730

OR2012-11668

Dear Mr. King:

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# 460734.

The Balch Springs Police Department (the "department"), which you represent, received a request for any formal statement made by a named individual to the department. 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 must address the department's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The requestor indicates in his request that he made a previous request for the information at issue on January 3, 2012. Whether or

not the requestor made a proper request for this information to the department on January 3, 2012, is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). The department represents it received the instant request on May 21, 2012. Based on the department's representation, we find it complied with section 552.301 of the Government Code in requesting this decision, and we will consider its claims for the submitted information.

Section 552.108 of the Government Code provides, in pertinent part, the following:

(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[.]

(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). 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In your comments to this office, although you quote subsections 552.108(a)(1) and 552.108(a)(2), you provide arguments to support a claim under subsection 552.108(a)(2). As previously stated, subsection 552.108(a)(2) pertains to information relating to a concluded criminal investigation that did not result in conviction or deferred adjudication. You have submitted a statement from the department's Chief of Police who asserts the submitted information relates to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to this information. Thus, we conclude the department 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 460734

Enc. Submitted documents

c: Requestor
(w/o enclosures)