



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 30, 2012

Mr. Elliot M. Barner  
Counsel for the City of West University Place  
Johnson, Radcliffe, Petrov & Bobbitt, P.L.L.C.  
1001 McKinney, Suite 1000  
Houston, Texas 77002-6424

OR2012-11853

Dear Mr. Barner:

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# 460502.

The City of West University Place Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. 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.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code 552.108(a)(2). Section 552.108(b)(2) excepts "[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(b)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.302(e)(1)(A).

You inform us the incident at issue is "not considered the subject of an open investigation nor has the incident resulted in conviction or deferred adjudication." Although you claim the submitted information is excepted from disclosure under section 552.108(a)(2), you state this

information relates to an ongoing investigation and prosecution of crime. However, sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue is related to a *concluded* criminal case “that did not result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2), (b)(2) (emphasis added). Thus, having considered your representations, we find you failed to show the submitted information relates to a criminal case that has concluded in a final result. Accordingly, we find you have not demonstrated the applicability of section 552.108(a)(2) or section 552.108(b)(2). *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the department may not withhold any of the submitted information under section 552.108(a)(2) or section 552.108(b)(2) of the Government Code. As you raise no other exceptions to disclosure, the submitted information must be released.<sup>1</sup>

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](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,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/bhf

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<sup>1</sup>We note that the requestor has a special right of access to some of the information being released in this instance. Gov’t Code § 552.023. Thus, should the department receive another request from a different requestor, it should again seek a ruling from this office. We note, however, the information being released includes the requestor’s driver’s license number, which is generally confidential under section 552.130 of the Government Code. We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *Id.* § 552.130(c). Thus, if the department receives another request for this same information from a person who does not have such a right of access, section 552.130(c) of the Government Code authorizes the department to redact the requestor’s driver’s license number without seeking a ruling from this office.

Ref: ID# 460502

Enc. Submitted documents

c: Requestor  
(w/o enclosures)