ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2012

Ms. Danielle Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-13180

Dear Ms. Folsom:

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# 466986 (GC No. 19867).

The Houston Emergency Center (the "HEC") received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

Section 552.108(a)(2) of the Government Code 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 that claims section 552.108(a)(2) must demonstrate the information at issue is related to a criminal investigation that concluded in a final result other than a conviction or a deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exception applies to information at issue). By its terms, section 552.108 of the Government Code applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that section 552.108 may be invoked by any proper custodian of information that relates to the underlying incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Where a non-law enforcement agency has custody

of information related 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 is related to a criminal case that has reached a conclusion other than a conviction or deferred adjudication and a representation from a law enforcement entity that it wishes to have the information withheld.

You state the Houston Police Department (the "department") has informed the HEC the submitted information is related to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. We understand the department wishes to have the information in question withheld. Based on your representations, we conclude the HEC may withhold the submitted information on behalf of the department 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,

Paige Lay

Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 466986

Enc. Submitted documents

c: Requestor
(w/o enclosures)