



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2013

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

OR2013-10281

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# 495506 (Houston GC No. 20525).

The Houston Emergency Center (the "HEC") received a request for information pertaining to specified 9-1-1 calls made by the requestor. 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)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). 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 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending 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 pending case

and a representation from the law enforcement agency that it wishes to have the information withheld.

You state the Houston Police Department (the “department”) objects to disclosure of Exhibits 2 and 2A because their release would interfere with a pending criminal investigation. Based on your representations, we conclude the HEC may withhold Exhibits 2 and 2A on behalf of the department under section 552.108(a)(1) of the Government Code. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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. Although section 552.108, by its terms, applies only to a law enforcement agency or a prosecutor, this office has concluded section 552.108 may be invoked by any proper custodian of information related to the underlying incident. *See* ORD 474. 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 department objects to the disclosure of Exhibits 3 and 3A because they are related to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representations, we conclude the HEC may withhold Exhibits 3 and 3A on behalf of the department under section 552.108(a)(2) of the Government Code.

In summary, the HEC may withhold (1) Exhibits 2 and 2A on behalf of the department under section 552.108(a)(1) of the Government Code and (2) Exhibits 3 and 3A 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tch

Ref: ID# 495506

Enc. Submitted documents

c: Requestor
(w/o enclosures)