



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2013

Ms. Laura W. Holder
Assistant County Attorney
Henderson County
100 East Tyler Street
Athens, Texas 75751

OR2013-17050

Dear Ms. Holder:

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# 501107.

The Henderson County Clerk's Office (the "county") received a request for correspondence between a named assistant county attorney and the Coffee City Municipal Court (the "municipal court") regarding specified notices and citations.¹ The county claims the requested information is excepted from disclosure under sections 552.107, 552.108, and 552.111 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.108(b)(2) excepts from disclosure "[a]n 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 . . . 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). Subsection 552.108(b)(2) protects internal law enforcement and prosecution records that relate to a concluded criminal investigation or

¹You inform us the Henderson County Clerk's Office received the request for information, which then forwarded it to the Henderson County Attorney's Office.

²We understand the county to raise sections 552.107 and 552.111 based on its arguments.

prosecution that did not result in a conviction or deferred adjudication. A governmental body claiming an exception 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). You state the submitted information pertains to complaints filed by the Texas Commission of Environmental Quality with the municipal court. We understand the complaints relate to alleged violations of section 341.011 of the Health and Safety Code, which carry criminal and civil penalties. *See Health & Safety Code* § 341.091(a). You inform us the case at issue has been dismissed by the municipal court and, therefore, was not adjudicated. The requestor disputes the county's assertion that the case was dismissed by the municipal court. Whether the submitted information pertains to a case that concluded in a result other conviction or deferred adjudication is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See Open Records Decision* Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See Open Records Decision* No. 552 at 4 (1990). Accordingly, based on the county's representation, we conclude the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, the county may withhold the submitted information under section 552.108(b)(2) of the Government Code.³

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

³As our ruling is dispositive, we do not address your other arguments to withhold this information.

Ref: ID# 501107

Enc. Submitted documents

c: Requestor
(w/o enclosures)