



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2013

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

OR2013-17262

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# 506014 (GC No. 20812).

The Houston Emergency Center (the "center") received a request for information pertaining to a specified address during a specified time period. 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 submitted information.

Section 552.108 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 2A, 2B, 3A, 3B, and 4A because their release would interfere with pending criminal investigations. Based on your representations, we conclude that the center may withhold Exhibits 2A, 2B, 3A, 3B, and 4A 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 that are 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 claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 applies to information held by a "law enforcement agency." However, section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. See Open Records Decision No. 474 at 4-5 (1987). Thus, where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating 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 relates to the criminal case that has reached a conclusion other than a conviction or a deferred adjudication and a representation from the law enforcement agency that it wishes to have the information withheld. You state the department requests Exhibits 5A and 5B be withheld because they pertain to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. You further state that the department advises that the investigation was concluded in a determination by the Harris County District Attorney's Office to decline accepting charges in this matter. Based on your representation and our review of the information at issue, we conclude that section 552.108(a)(2) is applicable to Exhibits 5A and 5B. Accordingly, the center may withhold Exhibits 5A and 5B under section 552.108(a)(2).

In summary, on behalf of the department, the center may withhold Exhibits 2A, 2B, 3A, 3B, and 4A under section 552.108(a)(1) of the Government Code and Exhibits 5A and 5B 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 506014

Enc. Submitted documents

c: Requestor
(w/o enclosures)