



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2013

Ms. Caitlin Culpepper
Records Supervisor
Taylor County Sheriff's Office
450 Pecan Street
Abilene, Texas 76902-1692

OR2013-19333

Dear Ms. Culpepper:

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# 504888.

The Taylor County Sheriff's Office (the "sheriff's office") received a request for several categories of information pertaining to a specified incident and a related internal investigation into a named individual. You state you do not have information responsive to several of the specified categories.¹ 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.

Initially, we note the information we have marked is not responsive to the instant request for information because it does not pertain to either the incident or the internal investigation specified in the request. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 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). You state the information you have marked pertains to an investigation where criminal charges were not filed. Thus, you state the information at issue relates to a closed case that did not result in conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information you have marked.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed to be public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff’s office may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

The sheriff’s office raises section 552.108(b)(2) of the Government Code for the remaining information. 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[.]” Gov’t Code § 552.108(b)(2). A governmental body must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *see Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). The remaining information was generated as part of an internal administrative investigation conducted by the sheriff’s office. You state the “incident was not handled as a criminal case.” Accordingly, as the internal investigation did not result in a criminal investigation or prosecution, you have failed to demonstrate the applicability of section 552.108(b)(2) to the

remaining information. Thus, the sheriff's office may not withhold the remaining information under section 552.108(b)(2).

We note portions of the remaining information contain motor vehicle record information.² Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find portions of the audio recordings contain license plate numbers. Accordingly, the sheriff's office must withhold the license plate numbers in the remaining audio recordings, which we have indicated, under section 552.130 of the Government Code.

In summary, with the exception of basic information, the sheriff's office may withhold the information you have marked under section 552.108(a)(2). The sheriff's office must withhold the license plate numbers we have indicated in the remaining audio recordings under section 552.130 of the Government Code. The remaining responsive information must be released.

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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

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²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 504888

Enc. Submitted documents

c: Requestor
(w/o enclosures)