



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2014

Mr. Jeffrey Giles  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2014-12255

Dear Mr. Giles:

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# 529165 (GC No. 21357).

The Houston Emergency Center (the "center") received a request for 9-1-1 call transcripts, registers, and audio records related to certain types of offenses at a specified business during a certain period.<sup>1</sup> You state the center does not maintain copies of some of the requested information because it was destroyed according to the center's retention policy.<sup>2</sup> You claim the submitted information is excepted from disclosure under section 552.108 of the

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<sup>1</sup>We note the center sought and received clarification of the request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). See also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-business-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Additionally, the requestor paid a deposit as required by section 552.263 of the Government Code on May 5, 2014. See Gov't Code § 552.263(e) (request considered received on date governmental body receives required deposit).

<sup>2</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990).

Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime [or]

(2) 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)(1), (2). Section 552.108(a)(1) is applicable to information pertaining to a pending or active criminal investigation or prosecution, while section 552.108(a)(2) protects law enforcement records pertaining to a criminal investigation or prosecution that concluded in a final result other than a conviction or a deferred adjudication. Section 552.108 may be invoked by the proper custodian of information relating to the 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 a criminal investigation by a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to an investigation and a representation from the law enforcement agency that it wishes to have the information withheld.

A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the Houston Police Department (the “department”) has advised the information submitted as Exhibits 2, 5, and 6 relates to criminal investigations that are pending additional leads. You further state the department has advised the information submitted as Exhibits 3 and 3A relates to an active criminal investigation. Thus, the department believes the release of this information would interfere the detection and investigation of crime. *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). Accordingly, the center may withhold these exhibits under section 552.108(a)(1) of the Government Code.

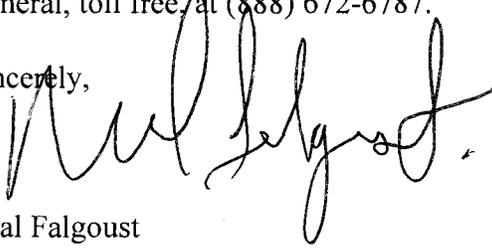
A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code § 552.301(e)(1)(A); Open Records Decision No. 434 at 2-3 (1986). You state the department has advised the information submitted as Exhibits 4 and 4A relates to criminal investigations that were discontinued and concluded without a conviction or deferred adjudication. Accordingly, the center may withhold these exhibits under section 552.108(a)(2) of the Government Code.

In summary, the center may withhold Exhibits 2, 3, 3A, 5, and 6 under section 552.108(a)(1) of the Government Code. The center may withhold Exhibits 4 and 4A 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/som

Ref: ID# 529165

Enc. Submitted documents

c: Requestor  
(w/o enclosures)