



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2014

Ms. Nneka Kanu
Assistant City Attorney
Legal Department
City of Houston
P. O. Box 368
Houston, Texas 77001-0368

OR2014-13611

Dear Ms. Kanu:

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# 536930 (Houston GC No. 21547).

The Houston Emergency Center (the "HEC") received a request for information regarding a specified address. You state the HEC does not have information responsive to a portion of the request.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, you state Exhibits 2A, 3A, 4A, and 5A are not responsive to the present request for information. This ruling does not address the public availability of non-responsive information, and the HEC need not release non-responsive information to the requestor.

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

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also 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)*. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See 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). 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 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”) advises the information submitted as Exhibit 2 pertains to an open and active criminal investigation. Thus, you indicate the department objects to disclosure of the information at issue because its release would interfere with an ongoing criminal investigation. Based on your representation, we conclude the HEC may withhold Exhibit 2 under section 552.108(a)(1) of the Government Code on behalf of the department. *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).

You further state the department has advised the HEC the information submitted as Exhibits 3, 4, and 5 is related to concluded criminal investigations that did not result in conviction or deferred adjudication. Based on your representation, we conclude the HEC may withhold Exhibits 3, 4, and 5 under section 552.108(a)(2) of the Government Code on behalf of the department.

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

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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/eb

Ref: ID# 536930

Enc. Submitted documents

c: Requestor
(w/o enclosures)