



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2009

Ms. Evelyn W. Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-01115

Dear Ms. Njuguna:

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# 337438.

The Houston Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You inform us that some of the requested information was previously ruled upon by this office in Open Records Letter No. 2009-00014A (2009). In that letter ruling, we concluded that, except for basic information, a responsive police report may be withheld under section 552.108(a)(2) of the Government Code. Since the law, facts, and circumstances surrounding this prior ruling have not changed, the department may continue to rely on Open Records Letter No. 2009-00014A as a previous determination and withhold the requested police report in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We now turn to your arguments regarding the information that was not ruled upon in Open Records Letter No. 2009-00014A.

You assert Exhibit 3 is also subject to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit 3 pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representation, we agree that Exhibit 3 may be withheld under section 552.108(a)(2). As our ruling is dispositive, we need not address your remaining argument against disclosure of Exhibit 3.

In summary, the department may continue to rely on Open Records Letter No. 2009-00014A with regards to the responsive police report. The department may withhold Exhibit 3 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 337438

Enc. Submitted documents

c: Requestor
(w/o enclosures)