



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 22, 2009

Mr. Gary A Scott  
Assistant City Attorney  
City of Conroe  
P.O. Box 3066  
Conroe, Texas 77305

OR2009-07016

Dear Mr. Scott:

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# 348651.

The City of Conroe (the "city") received a request for (1) all records pertaining to a specified police patrol unit for a specified time period, (2) all records pertaining to a named individual and the requestor for a specified time period, and (3) a specified incident report. You state that you have no responsive information for item 2 of the request. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received or to create responsive information. *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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). 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 exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 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). You state that the report marked as Exhibit A relates to an open and active case that is still pending. Based upon this representation, we conclude that the release of this report would interfere with the detection,

investigation, or prosecution of crime. See *Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to Exhibit A.

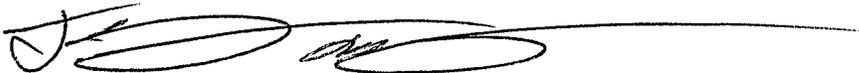
Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Gov't Code §§ 552.108(a)(2), .301(e)(1)(A). You state that Exhibit B pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this report.

As you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d 177. Thus, with the exception of basic information, which you state you have released, the city may withhold Exhibit A under section 552.108(a)(1) of the Government Code and Exhibit B under section 552.108(a)(2) of the Government Code.<sup>1</sup>

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](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,



Travis Tidmore  
Assistant Attorney General  
Open Records Division

TT/sdk

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<sup>1</sup>As our ruling is dispositive, we need not address your argument under section 552.130 of the Government Code.

Ref: ID# 348651

Enc: Submitted documents

c: Requestor  
(w/o enclosures)