



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2009

Ms. Diana Davis
Records Clerk
City of Harker Heights
305 Miller's Crossing
Harker Heights, Texas 76548

OR2009-08385

Dear Ms. Davis:

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# 346241.

The Harker Heights Police Department and the Harker Heights Animal Control Department (collectively the "city") received three requests, two from the same requestor, for a specified police report, all information concerning the incident addressed in that report, and all records concerning complaints received by the Animal Control Department regarding a specified animal during a specified time period. You state that you have released some of the requested information. You claim that 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 that you have submitted information that does not pertain to the specified police report, the specified incident, or the specified category of complaints received by the Animal Control Department. Therefore, we find this information, which we have marked, is not responsive to the instant request for information. The city need not release non-responsive information in response to this request for information, and this ruling will not address that information.

Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(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)(2). Section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. We note that 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 Gov't Code § 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You claim that the responsive submitted information consists of information regarding a case that concluded in a result other than conviction or deferred adjudication. Therefore, we conclude that section 552.108(a)(2) is generally applicable to the submitted information. We note, however, that the submitted information includes a citation, which we have marked. Because a copy of the citation has been provided to the individual who was cited, we find that the city may not withhold the citation under section 552.108(a)(2) of the Government Code.

However, as you acknowledge, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the 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 considered to be basic information). Thus, with the exception of basic information, which you indicate you have released, and the marked citation, you may withhold the responsive submitted information from disclosure pursuant to section 552.108(a)(2).

We note that the citation contains Texas motor vehicle record information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration issued by a Texas agency is excepted from public release.¹ Gov't Code § 552.130(a)(1), (2). Thus, the city must withhold the driver's license information we have marked in the submitted citation.

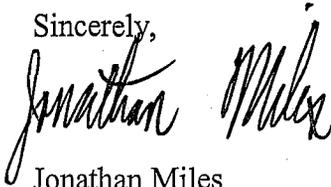
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, with the exception of basic information and the citation we have marked, you may withhold the responsive submitted information from disclosure pursuant to section 552.108(a)(2) of the Government Code. You must withhold the information we have marked under section 552.130 of the Government Code from the citations. The remaining 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.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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 346241

Enc. Submitted documents

c: Requestor
(w/o enclosures)