



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2009

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2009-10274

Dear Ms. De La Garza:

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# 351769.

The Houston Police Department (the "department") received a request for certain incident or offense reports involving three specific individuals from January 1, 2002 to the date of the request; incident or offense reports at a specific address involving the same three individuals from January 1, 2002 to the date of the request; any pawn shop transactions involving the same three individuals between March 2001 and the date of the request; alarm records from the same address; calls for service at the same address involving an alarm between January 1, 2007 and the date of the request; and an answer as to whether the department was notified of a security alarm system at the same address.¹ You state the department maintains no information responsive to portions of the request.² You state you will release some information to the requestor. You claim that the submitted information is excepted from

¹You note, and we agree, the department is not required to answer factual questions. See Open Records Decision No. 555 (Act does not require governmental bodies to provide answers to general inquiries).

²You note, and we agree, the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You also note, and we agree, the Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decisions Nos. 599 (1992), 534 (1989).

disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.³

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 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim the submitted information in Exhibit 3 relates to an open and active criminal investigation. Based on your representation, we conclude that the release of the information in Exhibit 3 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). Therefore, section 552.108(a)(1) applies to Exhibit 3.

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). You state the information in Exhibit 2 relates to a concluded criminal investigation that did not result in conviction or deferred adjudication for the charges brought against one of the four suspects. Based on this representation, we conclude that section 552.108(a)(2) applies to Exhibit 2.

However, 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 at 185-86. Therefore, with the exception of basic information, the department may withhold the submitted information in Exhibit 3 pursuant to section 552.108(a)(1) of the Government Code and the submitted information in Exhibit 2 pursuant to 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

³You inform us that Exhibit 2A was submitted for informational purposes only.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 351769

Enc. Submitted documents

c: Requestor
(w/o enclosures)