



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2009

Mr. Charles E. Zech
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2009-14192

Dear Mr. Zech:

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# 357638.

The City of Copperas Cove (the "city"), which you represent, received a request for information relating to a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the information you submitted.

You raise section 552.108(a)(2) of the Government Code, which 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 also raise section 552.108(b)(2), which excepts "[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(b)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) and section 552.108(b)(2) are applicable only if the information in question is related to a concluded criminal investigation that did not result in a conviction or a deferred adjudication.

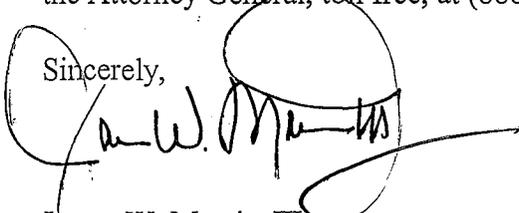
¹You inform us that the city no longer asserts the other exceptions to disclosure you initially claimed.

You state that the submitted information is related to a criminal case that did not result in a conviction or a deferred adjudication. In support of your claim, you have submitted a memorandum from a lieutenant of the city police department. As you acknowledge, the memorandum states that the submitted information pertains to a case that was awaiting presentation to a grand jury when the city received the instant request for the information. Thus, the memorandum is not consistent with your characterization of the status of the case. Under these circumstances, we are unable to conclude that the submitted information is related to a concluded case that did not result in a conviction or a deferred adjudication. See Gov't Code § 552.108(a)(2), (b)(2). We therefore conclude that the city may not withhold any of the submitted information under section 552.108 of the Government Code.² Thus, because the city claims no other exception to disclosure, the submitted information must be released to the requestor in its entirety.³

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, toll free, at (888) 672-6787.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

²We note that the submitted information includes a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

³We note that the city would ordinarily be required to withhold some of the submitted information to protect the present requestor's privacy. The requestor has a right, however, to her own private information. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Should the city receive another request for these same records from a person who would not have a right of access to this requestor's private information, the city should resubmit these records and request another decision. See Gov't Code §§ 552.301(a), .302.

Ref: ID# 357638

Enc: Submitted documents

c: Requestor
(w/o enclosures)

