



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2009

Mr. Robert Massey
Assistant City Attorney II
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2009-15566

Dear Mr. Massey:

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# 360036 (City ID# 222).

The City of Wichita Falls (the "city") received a request for information relating to a specified case number. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. 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).

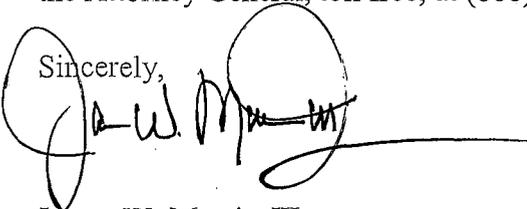
You inform us, and have provided a letter from the city's chief of police stating, that the submitted information is related to a police investigation "that *has not resulted* in a conviction or deferred adjudication" (emphasis added). You also state that "[t]o the extent that a case resulted in no conviction or deferred adjudication regarding the suspect, the [c]ity contends that the investigation records requested are protected from disclosure." We note

that section 552.108(a)(2) and section 552.108(b)(2) are applicable only if the information at issue is related to a concluded criminal case "that *did not result* in conviction or deferred adjudication." Gov't Code § 552.108(a)(2), (b)(2) (emphasis added). Thus, having considered your representations and the police chief's letter, we find that you have not demonstrated that the submitted information falls within the scope of section 552.108(a)(2) or section 552.108(b)(2). *See id.* § 552.301(e)(1)(A). We therefore conclude that the city may not withhold any of the submitted information under section 552.108 of the Government Code. As the city claims no other exception to disclosure, all of the submitted information must be released.¹

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_or1.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

Ref: ID# 360036

Enc: Submitted information

c: Requestor
(w/o enclosures)

¹We note that the city might ordinarily be required to withhold some of the submitted information to protect the privacy of the family of the deceased individual who is the subject of the information. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004). In this instance, however, the requestor has a right of access to any information that the city might be required to withhold from the public on privacy grounds. *See Gov't Code* § 552.023. Should the city receive another request for these same records from a person who would not have this requestor's right of access, the city should resubmit these records and request another decision. *See id.* §§ 552.301, 302.