



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 25, 2010

Ms. Stephanie Galanides  
City Secretary  
City of Heath  
200 Laurence Drive  
Heath, Texas 75032

OR2010-02840

Dear Ms. Galanides:

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# 371682.

The City of Heath (the "city") received a request for: (1) records pertaining to a specified incident involving a named individual and its referral to any law enforcement agency, (2) particular city agendas and meeting minutes, and (3) the names of individuals holding certain city positions during a specified time period.<sup>1</sup> You indicate you have released information responsive to category three to the requestor. You claim 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 you have not submitted any information responsive to the portion of the request seeking city agendas and meeting minutes. We assume, to the extent information responsive to this portion of the request existed when the city received the request for information, you have released it to the requestor. If not, then you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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<sup>1</sup>The city sought and received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

Section 552.108 of the Government Code provides in pertinent 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;

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming subsection 552.108(a)(2) or subsection 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You raise subsections 552.108(a)(2) and (b)(2) for the submitted unsigned letters that pertain to the incident at issue in the request. However, you state "there are no records of an investigation, citation, arrest, conviction or deferred adjudication pertaining to the individual named." Further, you also state "[c]opies of signed versions of the documents or other record that shows any other action ensued were not found." Upon review of your arguments and the submitted information, we find you have not demonstrated a law enforcement agency or prosecutor conducted a criminal investigation into the incident at issue. Thus, we find you have not demonstrated, nor does the information reflect, any of the submitted information consists of law enforcement records relating to a criminal investigation that did not result in a conviction or deferred adjudication. Therefore, you have not met your burden under subsection 552.108(a)(2) or subsection 552.108(b)(2). Accordingly, the city may not withhold any of the submitted information under section 552.108 of the Government Code.

We note some of the submitted information may be excepted from public disclosure under section 552.1175 of the Government Code.<sup>2</sup> Section 552.1175 provides in part:

(a) This section applies only to:

...

(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

*Id.* § 552.1175(a)(5), (b). Portions of the submitted information pertain to an employee who may be employed by the Rockwall County Criminal District Attorney's Office (the "district attorney"). Thus, the city must withhold the information we have marked under section 552.1175, to the extent the individual is an employee of the district attorney and elects to restrict access to the marked information in accordance with section 552.1175(b). As you raise no further arguments against disclosure of the remaining information, it 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](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in cursive script that reads "C. Alvarado".

Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 371682

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)