



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2011

Mr. David Daugherty  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2011-00375

Dear Mr. Daugherty:

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# 405494 (C.A. File No. 10GEN2392).

The Harris County Constable Precinct Five's Office (the "constable") received a request for the report for a specified incident. You state the constable has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, 552.132, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your arguments under section 552.108 of the Government Code for the submitted information. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication.<sup>1</sup> Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to

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<sup>1</sup>After reviewing the constable's arguments, we understand you to raise section 552.108(a)(2) of the Government Code.

a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state, and have provided documentation showing, the submitted information pertains to a matter which was ordered dismissed by Harris County Court of Law No. 13. Based on the information you provided and our review, we agree the submitted report pertains to a case that concluded in a result other than conviction or deferred adjudication. Accordingly, the constable may withhold the submitted information under section 552.108(a)(2) of the Government Code.

However, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the constable may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>2</sup> Included in the basic information is the identification and description of the complainant. However, we note a complainant's home address and telephone number are generally not considered basic information unless the address is the location of the crime, the place of arrest, or the premises involved. ORD 127 at 4 (stating only identity and description of the complainant are available to the public). We understand you to raise section 552.132 for the identifying information of the complainant in the submitted report. Accordingly, we will consider your arguments against disclosure of this information.

Section 552.132 of the Government Code provides in relevant part:

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim. An election under this subsection must be made in writing on a form developed by the governmental body, be signed by the employee, and be filed with the governmental body before the third anniversary of the latest to occur of one of the following:

- (1) the date the crime was committed;

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<sup>2</sup>As our ruling is dispositive, we will not address you claims under sections 552.101, 552.102, 552.117, 552.1175, 552.130, 552.136, and 552.147.

(2) the date employment begins; or

(3) the date the governmental body develops the form and provides it to employees.

(e) If the employee fails to make an election under Subsection (d), the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.

Gov't Code § 552.132(d), (e). Section 552.132(d) permits an employee of a governmental body who is also a victim, as defined by subchapter B of chapter 56 of the Code of Criminal Procedure, to elect whether to allow public access to information held by a governmental body that would identify or tend to identify the victim. *Id.* § 552.132(d). Under section 552.132(e) of the Government Code, if the employee fails to make such an election, the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. *Id.* § 552.132(e). Upon review, we conclude the complainant is an employee of a governmental body who is also a victim as defined by subchapter B of chapter 56 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 56.32(a)(11) (defining "victim"). We also note the request was made within three years since the date the alleged crime was committed. Thus, when releasing basic information, if the complainant has elected to disallow public access to his identifying information under subsection 552.132(d) of the Government Code or has failed to make an election, the constable must withhold the information we have marked under section 552.132(d) of the Government Code.

In summary, with the exception of basic information, the constable may withhold the submitted information under section 552.108(a)(2) of the Government Code. When releasing basic information, if the complainant has elected to disallow public access to his identifying information under subsection 552.132(d) of the Government Code or has failed to make an election, the constable must withhold the information we have marked under section 552.132 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 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, 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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/vb

Ref: ID# 405494

Enc. Submitted documents

c: Requestor  
(w/o enclosures)