



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2011

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2011-12541

Dear Mr. Alicie:

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# 428344.

The Baytown Police Department (the "department") received a request for the police report and autopsy report pertaining to a specified incident and involving a named individual. You state the department will redact social security numbers under section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested autopsy report. To the extent any such information existed on the date the department received the request, we assume you have released it. *See* 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). If you have not released this information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

¹Section 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. Gov't Code § 552.147(b).

You claim that the information you have marked is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representations, and our review, we find that section 552.108(a)(2) is applicable in this instance. Accordingly, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

Section 552.151 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.151. You inform us that the information you have marked under section 552.151 relates to the identity of undercover police officers. You represent release of this information would subject these undercover officers to a “substantial threat of physical harm.” Based on your representations, we conclude the department must withhold the information you have marked under section 552.151 of the Government Code.

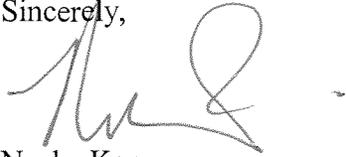
In summary, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The department must withhold the information you have marked under section 552.151 of the Government Code. The remaining information must be released.

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, 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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a large, stylized flourish at the end.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 428344

Enc. Submitted documents

cc: Requestor
(w/o enclosures)