



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2011

Mr. B. Chase Griffith
Counsel for City of McKinney
Brown & Hefmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-13440

Dear Mr. Griffith:

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# 430160 (McKinney ORR # 10-4006).

The McKinney Police Department (the "department"), which you represent, received a request for any and all reports involving the requestor since February 2, 2011 until the date of the request. You state you have released some information. 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.

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 [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the 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)(1) - (2). Section 552.108(a)(1) applies to information that pertains to a criminal investigation or prosecution that is currently pending. A governmental body claiming subsection 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state case number 11-003297 relates to an open investigation and that release of such information would interfere with law enforcement or prosecution. Based on this representation and our review, we conclude that the release of the case number 11-003297 would interfere with the detection, investigation, or prosecution of crime, and we agree section 552.108(a)(1) of the Government Code is applicable to case number 11-003297. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976).

A governmental body that claims 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* Gov't Code §§ 552.108(a)(2), .301(e)(1)(A). You state that case number 11-003336 relates to a criminal investigation that is closed and did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) of the Government Code is applicable to case number 11-003336.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold case number 11-003297 under section 552.108(a)(1) of the Government Code and case number 11-003336 under section 552.108(a)(2) 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, 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 cursive script that reads "Kirsten Brew". The signature is written in black ink and is positioned above the printed name.

Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 430160

Enc. Submitted documents

c: Requestor
(w/o enclosures)