



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2013

Ms. Lois A. Rockefeller
Counsel for the City of Breckenridge
Messer, Rockefeller & Fort, P.L.L.C.
4400 Buffalo Gap Road, Suite 2800
Abilene, Texas 79606

OR2013-03254

Dear Ms. Rockefeller:

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# 479721.

The City of Breckenridge (the "city"), which you represent, received three requests from two different requestors for information regarding a specified incident and information regarding any city police officers being placed on administrative leave during a specified time period. You state you do not have information responsive to a portion of one of the requests.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have also received correspondence from the Office of the Attorney General (the "OAG") objecting to release of the submitted information. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code 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[.]" *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

may be invoked by the proper custodian of information relating to the incident. *See* Open Records Decision No. 474 at 4-5 (1987). Thus, where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to a criminal case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the criminal case that has reached a conclusion other than a conviction or deferred adjudication and a representation from the law enforcement agency that it wishes to have the information withheld.

As noted above, we received correspondence from the OAG objecting to the release of the submitted information because it relates to a concluded criminal investigation conducted by the OAG's Law Enforcement Division and Criminal Prosecution Division. The OAG further states the investigation did not result in a conviction or deferred adjudication. Based on these representations and our review, we find section 552.108(a)(2) of the Government Code is applicable to the submitted information. Accordingly, the city may withhold the submitted information on behalf of the OAG 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 479721

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)