



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2015

Mr. John Saenz
Crime Records Office
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2015-04300

Dear Mr. Saenz:

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# 555794.

The McAllen Police Department (the "department") received a request for a specific case report. The department states it has released some information. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Section 552.108(a) of the Government Code provides in relevant part the following:

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:

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

Gov't Code § 552.108(a)(1)-(2). Subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2)

protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication.

The department claims the submitted information is excepted from disclosure under subsection 552.108(a)(2) of the Government Code. A governmental body claiming subsection 552.108(a)(2) must demonstrate that the information at issue 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). The department states the submitted information relates to a concluded case that did not result in conviction or deferred adjudication. However, the department also states the case will “continue to remain in an investigatable/prosecutable status until the appropriate statute of limitations has transpired or a different disposition has been granted by the court.” Upon review, we conclude the department has provided this office with conflicting arguments regarding the applicability of section 552.108 of the Government Code to the submitted information. *See id.* § 552.301(e)(2) (governmental body must label copy of information at issue to indicate which exceptions apply to which parts of the information). Therefore, we find the department has not established the submitted information is excepted from disclosure under section 552.108 of the Government Code, and it may not be withheld on this basis. As the department raises no further exceptions against disclosure, the submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 555794

Enc. Submitted documents

c: Requestor
(w/o enclosures)