



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 28, 2015

Ms. Jacqueline Cullom  
Assistant City Attorney  
City of San Marcos  
630 East Hopkins Street  
San Marcos, Texas 78666

OR2015-18023

Dear Ms. Cullom:

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# 578022.

The City of San Marcos (the "city") received a request for any phone calls made by a named officer of the city's police department (the "department") to a named individual regarding a specified topic during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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. *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state the submitted information pertains to a criminal investigation by the department that concluded in a result other than conviction or deferred adjudication. However, the requestor asserts the submitted information does not relate to a criminal investigation. Whether the submitted information relates to a criminal investigation is a question of fact. Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). This office is unable to resolve disputes of fact in the open records ruling

process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. See ORD 552 at 4. Accordingly, based on your representations, we conclude section 552.108(a)(2) is applicable to the submitted information. Thus, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 578022

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining argument to withhold this information.