



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2015

Ms. Evelyn W. Kimeu
Staff Attorney
Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2015-22119

Dear Ms. Kimeu:

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# 584167 (HPD ORU No. 15-5006).

The Houston Police Department (the "department") received a request for all e-mails that were sent, received, or deleted by a named department officer under a specified e-mail address over a specified time period. 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 representative sample of information.¹

Initially, you state some of the submitted information is not responsive to the present request. This ruling does not address the public availability of the non-responsive information, and the department need not release it in response to this request.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A government body claiming section 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 Exhibit 2 pertains to an open and active criminal investigation for which the Harris County District Attorney’s Office has accepted charges and the suspect is awaiting a court hearing. You state Exhibit 3 pertains to an open and active criminal investigation that has been referred to the Harris County Grand Jury. Based on your representations and our review, we conclude the release of Exhibits 2 and 3 would interfere with the detection, investigation, or prosecution of crime. *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. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue. Accordingly, the department may withhold the responsive information in Exhibits 2 and 3 under section 552.108(a)(1) of the Government Code.

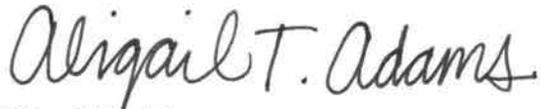
Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108(a)(2) must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit 4 pertains to a closed criminal investigation which was no billed by a grand jury. You state Exhibit 5 pertains to a criminal investigation that was closed due to the death of the suspect, and thus, did not result in a conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) of the Government Code is applicable to the information at issue. Accordingly, the department may withhold the responsive information in Exhibits 4 and 5 under section 552.108(a)(2).

In summary, the department may withhold the responsive information in Exhibits 2 and 3 under section 552.108(a)(1) of the Government Code. The department may withhold the responsive information in Exhibits 4 and 5 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.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,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 584167

Enc. Submitted documents

c: Requestor
(w/o enclosures)