



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2016

Mr. Alan T. Ozuna
Counsel for the City of Harlingen
Denton Navarro Rocha Bernal Hyde & Zech, P.C.
701 East Harrison, Suite 100
Harlingen, Texas 78550-9165

OR2016-26966

Dear Mr. Ozuna:

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# 636514.

The Harlingen Police Department (the "department"), which you represent, received a request for the affidavits filed in conjunction with three specified search warrants. 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not consist of the specified affidavits. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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. *See* Gov't Code 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.302(e)(1)(A). You state the responsive information relates to a criminal investigation that has not resulted in a conviction or deferred adjudication. We note section 552.108(a)(2) is applicable only if the information at issue is

related to a concluded criminal case “that *did not* result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2) (emphasis added). Thus, having considered your representations, we find you have not demonstrated the responsive information falls within the scope of section 552.108(a)(2) of the Government Code. *See id.* § 552.301(e)(1)(A). We therefore conclude the department may not withhold any of the responsive information under section 552.108(a)(2) of the Government Code. As no further exceptions to disclosure have been raised, the department must release the responsive information.¹

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 636514

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a right of access to some of the information being released in this instance. *See Gov’t Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.