



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2020

Mr. Joe R. Zapata
Administrative Supervisor
Houston Police Department
1200 Travis, 10th Floor
Houston, Texas 77002-6000

OR2020-02305

Dear Mr. Zapata:

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# 814730 (ORU Nos. 19-13708 & 20-00268).

The Houston Emergency Center (the "center") received two requests from different requestors for information pertaining to a specified 9-1-1 call regarding a certain incident. 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. We have also received and considered comments from a representative of one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the procedural obligations of the center under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). We note the center received the request for information on December 4, 2019. You do not inform us the center was closed on any business days between December 4, 2019, and December 18, 2019. Accordingly, the center's ten-business-day deadline to request a ruling was December 18, 2019. However, the envelope in which you submitted to this office the information required by section 552.301(b) was postmarked December 20, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the center failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because you inform us the Houston Police Department (the “department”) objects to the release of the information at issue, we will consider whether the center may withhold the information under section 552.108 of the Government Code on behalf of the department.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 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); Open Records Decision No. 434 (1986). Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 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 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4 5 (1987). Where a non law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to a criminal investigation of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the criminal investigation and a representation from the law enforcement agency that it wishes to have the information withheld.

You state the department objects to the release of the submitted information because it relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on these representations and our review, we conclude the center may withhold the submitted information under section 552.108(a)(2) of the Government Code on behalf of the department.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Meagan Hunter". The signature is fluid and cursive, with the first name "Meagan" written in a larger, more prominent script than the last name "Hunter".

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/mo

Ref: ID# 814730

Enc. Submitted documents

c: 2 Requestor
(w/o enclosures)