ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2009

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2009-09070

Dear Ms. Smith:

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# 347835 (DPS OR 09-0759).

The Texas Department of Public Safety (the "department") received a request for information relating to a specified incident. You state you have released some of the requested information to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Part 23 of title 28 of the Code of Federal Regulations was established to regulate intelligence databases pertaining to certain criminal activities, such as drug trafficking and extortion, that involve a large number of participants over a broad geographical area. *See* 28 C.F.R. § 23.2 (background of part 23). The policy standards of part 23 are applicable to all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3711 et seq. *Id.* § 23.3(a). For purposes of part 23, a criminal intelligence system "means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information," and an intelligence project "means the organizational unit which operates an intelligence system on behalf of and for the benefit of a single agency or the organization which operates an interjurisdictional intelligence system on behalf of a group of participating agencies." *Id.* § 23.3(b)(1), (5).

The release of information within these criminal intelligence databases is governed by section 23.20 of part 23, which provides in relevant part the following:

> (e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.
>
> (f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.
>
> (2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

*Id.* § 23.20(e), (f). You state that the reports in Attachment A were generated and are maintained by the department's Criminal Intelligence Service as part of a criminal intelligence system operated pursuant to part 23 of title 28 of the Code of Federal Regulations. Thus, we conclude that these reports are confidential under section 23.20, and may be released only in accordance with that section. You state that the requestor does not appear to be a member of a law enforcement authority. *See id.* § 23.20(f)(1). In addition, the requestor does not have a right to know the information at issue for purposes of section 23.20(e), and you state you have no indication that the release of the reports are necessary to avoid imminent danger to life or property. *Id.* § 23.20(f)(2). Therefore, we conclude that the reports in Attachment A are confidential under section 23.20 of title 28 of the Code of Federal Regulations, and must be withheld under section 552.101 of the Government Code.

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the report in Attachment B is related to a pending criminal investigation. Based on your representation, we find that release of this report would interfere with the detection, investigation, or prosecution of crime. We therefore conclude that section 552.108(a)(1) is generally applicable to the remaining information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of the basic information, the department may withhold the report in Attachment B under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the information in Attachment A under section 552.101 of the Government Code in conjunction with section 23.20 of title 28 of the Code of Federal Regulations. With the exception of the basic information, the department may withhold the report in Attachment B under section 552.108(a)(1) 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#347835

Enc. Submitted documents

c: Requestor
(w/o enclosures)