



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2010

Ms. Cecilia Gamez
Crime Records Bureau
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2010-03750

Dear Ms. Gamez:

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# 373116.

The McAllen Police Department (the "department") received a request for a specified incident report. You claim that the requested 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.

You raise section 552.108 of the Government Code for the submitted information, which provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108 protects certain specific types of law enforcement information. Section 552.108(a)(1) is applicable if release of the information would interfere with a pending criminal investigation or prosecution. *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(b)(1) is applicable to internal records of a law enforcement agency, the release of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body that raises section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See Gov't Code § 552.301(e)(1)(A); Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted information pertains to a pending criminal investigation. We note, however, that the submitted report relates to an investigation of an assault that allegedly occurred on July 13, 2001. The statute of limitations for the offense described in this report is two years. *See Pen. Code § 22.01(b)* (assault offenses under section 22.01(a) are class A misdemeanors); *Crim. Proc. Code art. 12.01(6)* (indictment or information on misdemeanor may be presented within two years from date of commission of offense, and not afterward). You have not informed this office that any criminal charges were filed within the limitations period nor have you explained how release of the submitted report would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has not run. Thus, we find you have not demonstrated that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Gov't Code § 552.108(a)(1)*. Likewise, you have not explained how or why release of the submitted report would interfere with law enforcement or crime prevention. *See id.* § 552.108(b)(1). We therefore conclude that the department may not withhold the submitted report under sections 552.108(a)(1) or 552.108(b)(1) of the Government Code. As you raise no other exceptions to the disclosure, the submitted report must be released.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Luttrall" followed by a small flourish.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 373116

Enc. Submitted documents

c: Requestor
(w/o enclosures)