



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 15, 2010

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
El Paso City Prosecutors Office  
810 East Overland Avenue  
El Paso, Texas 79901-2516

OR2010-10522

Dear Ms. Walker:

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# 386638 (El Paso Reference No. 2010-05-09-AG).

The El Paso Police Department (the "department") received a request for a list of "9-1-1-abusers" and 130 specified police reports. You state you are releasing much of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. You have also provided affidavits from the District Attorney for the Thirty-fourth Judicial District (the "district attorney") who claims some of the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.<sup>1</sup>

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 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

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<sup>1</sup>To the extent any additional responsive information existed on the date the department received this request, we assume you have released it. If you have not released any such records, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

body claiming section 552.108 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, and the district attorney's affidavits reflect, that report numbers 10-028101, 09-0348010, 09-120016, 09-058077, 08-211019, 08-014001, and 08-234006 pertain to pending criminal prosecutions. Furthermore, you state the remaining submitted reports pertain to open criminal investigations by the department. We note, however, report numbers 08-115140 and 08-078040 involve alleged theft, assault, and graffiti that occurred in March and April of 2008. You state the department received this request on April 26, 2010. The statute of limitations for the type of offenses described in these reports is two years. *See* Penal Code §§ 22.01(b) (assault offenses under section 22.01(a) are Class A misdemeanors), 28.08(b)(2) (amount of pecuniary loss due to graffiti is \$500 or more but less than \$1,500 is a Class A misdemeanor), 31.03(e)(2)(A) (theft of property valued \$50 or more but less than \$500 is a misdemeanor); Crim. Proc. Code art. 12.02 (indictment for misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward). More than two years have elapsed since the events giving rise to the investigations in report numbers 08-115140 and 08-078040, and you have not informed this office any criminal charges were filed within the limitations periods. Furthermore, you have not otherwise explained how release of these reports would interfere with the detection, investigation, or prosecution of crime. Thus, report numbers 08-115140 and 08-078040 may not be withheld under section 552.108(a)(1) of the Government Code. However, based upon your representations and the submitted affidavits, we conclude that section 552.108(a)(1) is applicable to the remaining submitted 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). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of report numbers 08-115140 and 08-078040 and basic information, the department may withhold the remaining submitted reports under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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<sup>2</sup>As our ruling under section 552.108 is dispositive, we need not address the district attorney's remaining argument against disclosure, except to note that basic information may generally not be withheld from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991). We also note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147.

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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 386638

Enc. Submitted documents

cc: Requestor  
Marcus Schwartz  
(w/o enclosures)