



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2010

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson Street Suite 728
Richmond, Texas 77469

OR2010-12293

Dear Ms. Rangel:

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# 390932.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for incident reports pertaining to a specified address and named individuals. You state you have released some of the requested information. You claim that 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 representative sample of information.¹

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 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 submitted information relating to case number 06-12480 pertains to a pending case.

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We note that the information in question pertains to an incident of alleged criminal mischief. Under section 28.03 of the Penal Code, criminal mischief is either a felony or a misdemeanor, depending on the value of the property involved and other statutorily specified circumstances. *See* Penal Code § 28.03(b)(1)-(7). Under article 12.01 of the Code of Criminal Procedure, the statute of limitations for prosecution of a felony case of criminal mischief is three years from the date of the commission of the offense. *See* Crim. Proc. Code art. 12.01(7). Under article 12.02 of the Code of Criminal Procedure, an indictment, information, or complaint in a misdemeanor case of criminal mischief “may be presented within two years from the date of the commission of the offense, and not afterward.” *Id.* art. 12.02(a)-(b). In this instance, the criminal mischief allegedly occurred on June 25, 2006. You state that the sheriff received the instant request for information on June 2, 2010. You do not indicate that any prosecution of the alleged offense was pending on the date of the sheriff’s receipt of the request. Thus, based on your representations and our review of the information at issue, we find that prosecution of the alleged offense is barred by the statute of limitations. Accordingly, we conclude that you have not demonstrated that release of the information relating to case number 06-12480 would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1); *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). Therefore, the sheriff may not withhold any of the information relating to case number 06-12480 under section 552.108(a)(1) of the Government Code.

You also claim section 552.108(a)(2), which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state that the submitted information relating to case number 07-26267 pertains to a closed case that did not result in a conviction or a deferred adjudication. Based on your representations, we conclude that section 552.108(a)(2) is generally applicable to that information.

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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; 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 that must be released under section 552.108(c), the sheriff may withhold the

information relating to case number 07-26267 under section 552.108(a)(2). The rest of the submitted information must be released.²

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 390932

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a). However, if the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.