



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2010

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

OR2010-13005

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# 391809.

The McAllen Police Department (the "department") received a request for the full report and the emergency protective order for case number 09-110304. You claim the submitted document 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.

Initially, we note you have not submitted information responsive to the request for the full report for case number 09-110304. To the extent information regarding this portion of the request existed on the date the department received this request, we assume you have released it. If you have not released any such information, 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).

Next, we note the submitted document is a court-filed emergency protective order signed by a magistrate. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See* Gov't Code § 552.022(a)(17) (information contained in public court record is not excepted from required disclosure under Act unless expressly

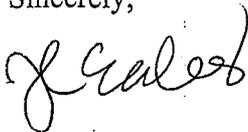
confidential under other law). Although you seek to withhold the document under section 552.108, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the department may not withhold the submitted document under section 552.108 of the Government Code. However, because section 552.101 of the Government Code is "other law" for purposes of section 552.022, we will address your argument under this section.

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. You assert information contained in the submitted document pertaining to two named individuals is confidential under section 552.101. You have not, however, directed our attention to any law, nor are we aware of any law, that makes this information confidential. *See id.* § 552.301 (governmental body seeking to withhold information must submit the information, labeled to indicate which exceptions apply to which parts of the information, along with arguments explaining the applicability of claimed exceptions); *see, e.g.*, Open Records Decision No. 478 at 2 (1987) (statutory confidentiality). Accordingly, the department may not withhold this information under section 552.101. As you raise no further exceptions to disclosure, the submitted document must be released in its entirety.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/em

Ref: ID# 391809

Enc. Submitted documents

c: Requestor
(w/o enclosures)