



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 1, 2010

Ms. Cecilia Gamez  
Crime Records Bureau  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78501

OR2010-14952

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# 395397.

The McAllen Police Department (the "department") received a request for a specified offense 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. Section 552.108 provides in pertinent part:

(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; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(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; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In this instance, you cite to subsections 552.108(a)(1) and 552.108(b)(1) and argue the submitted information relates to an ongoing criminal investigation. However, in response to a previous request for the same information, you raised subsections 552.108(a)(2) and 552.108(b)(2) and informed this office the information pertained to a concluded investigation. In response to your prior request for a ruling, this office issued Open Records Letter No. 2010-09462 (2010), which stated with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code. In raising subsections 552.108(a)(1) and 552.108(b)(1), you have provided no additional arguments explaining how the information you previously described as relating to a closed case, now relates to an ongoing criminal investigation. Because of these contradictory representations, we find you have failed to sufficiently demonstrate the applicability of section 552.108(a)(1) to the submitted information. *See Gov't Code* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Consequently, the department may not withhold the submitted incident report under section 552.108 of the Government Code.

We note that some of the submitted information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state. *Id.* § 552.130(a)(2). Thus, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>2</sup> The remaining information 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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 395397

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.