



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2011

Mr. David A. Mendoza
Assistant District Attorney
Hays County District Attorney's Office
110 East Martin Luther King
San Marcos, Texas 78666

OR2011-06190

Dear Mr. Mendoza:

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# 416405.

The Hays County Sheriff's Office (the "sheriff") received a request for the full reports from January 2009 to February 2011 for a specified address. You claim the submitted reports are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 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 the criminal cases are still pending prosecution. We note, however, some of the reports clearly reflect that they pertain to non-criminal incidents. You do not explain how this information pertains to any pending criminal case or prosecution, nor do you otherwise adequately explain why this information is excepted from disclosure under section 552.108. Accordingly, these records may not be withheld under section 552.108(a)(1) of the Government Code. We also note report number C09-03867 involves an allegation of misdemeanor theft that occurred on

January 29, 2009, and report number C09-04519 involves an alleged misdemeanor assault that occurred on February 3, 2009. The statute of limitations for these types of offenses is two years. *See* Crim. Proc. Code art. 12.02 (misdemeanors subject to two year limitations period). Thus, the statute of limitations for the crimes alleged in these reports had run prior to the sheriff's receipt of the request for information on February 11, 2011. You do not inform this office that any criminal charges were filed as a result of the alleged crimes within the limitations period, nor do you explain how the release of these reports would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has not run. Therefore, we find the sheriff has failed to demonstrate the applicability of section 552.108(a)(1) to report numbers C09-03867 and C09-04519, and they may not be withheld on this basis. However, based on your representation that the remaining reports are pending criminal prosecutions, we conclude section 552.108(a)(1) is applicable to these reports. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff may withhold the reports we marked under section 552.108(a)(1) of the Government Code.

Finally, we note report number C09-04519 contains a Texas license plate number subject to section 552.130 of the Government Code.¹ This section provides that information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release. *See* Gov't Code § 552.130(a)(2).² Therefore, the sheriff must withhold the Texas license plate number we marked under section 552.130 of the Government Code. The remaining information must be released.

In summary, with the exception of basic information, the sheriff may withhold the reports marked under section 552.108(a)(1) of the Government Code. The sheriff must withhold the marked Texas license plate number in report number C09-04519 under section 552.130 of the Government Code. The remaining information must be released.

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

²We note this office 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, without the necessity of requesting an attorney general decision.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 416405

Enc. Submitted documents

c: Requestor
(w/o enclosures)