



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2011

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

OR2011-09215

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# 422539.

The McAllen Police Department (the "department") received a request for information pertaining to the requestor during a specified time period and information pertaining to a specified incident. 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 information.

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 on-going law enforcement and prosecution efforts in general.

You state that the submitted police report relates to a pending criminal case. However, we note the offense listed in the submitted report is aggravated assault and the offense date is March 5, 2004. The statute of limitations for aggravated assault is three years. *See* Pen. Code § 22.02(b) (aggravated assault is felony of second degree); Crim. Proc. Code art. 12.01(7) (providing an indictment or information on felony not listed in articles 12.01(1)-(6) may be presented within three years from the date of the commission of the offense, and not afterward). Additionally, we note the report states the offense was "re-classified as a Class 'A' misdemeanor assault." The statute of limitations for misdemeanor assault is two years. *See* Crim. Proc. Code art. 12.02 (indictment or information for misdemeanor offense may be presented within two years from date of commission of offense, and not afterward). Over seven years have elapsed since the date of the offense. Thus, regardless of whether the offense is a felony or a misdemeanor, the statute of limitations for the offense has expired. You have not informed this office that criminal charges were brought within the applicable limitations period or that a prosecution of this case was pending when the department received this request for information. Furthermore, you have not otherwise explained how release of this report would interfere with the detection, investigation, or prosecution of crime. Thus, the submitted report may not be withheld under subsection 552.108(a)(1) or subsection 552.108(b)(1) of the Government Code.

We note that the submitted report contains information that is subject to section 552.130 of the Government Code.¹ Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or

¹The 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).

country. *See* Act of May 30, 1997, 75th Leg., R.S., ch. 1187, 1997 Tex. Gen. Laws 4575, 4580 *amended by* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4. Upon review, we find the department must withhold the information we have marked under section 552.130 of the Government Code.² 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, 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 422539

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including a Texas driver's license number and Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.