ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

Chief James S. Kelley
City of Sweetwater Police Department
Box 450
Sweetwater, Texas 79556

OR2011-14677

Dear Chief Kelley:

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# 432672.

The Sweetwater Police Department (the "department") received a request for a specified call for service. 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.

We begin by noting that some of the submitted information, which we have marked, is not responsive to the instant request for information, as it was created after the department received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

We understand you to raise section 552.108(b)(1) of the Government Code, which excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information which, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws).

Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement and crime prevention. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, you have not provided any arguments demonstrating how the release of any specific portions of the information at issue would interfere with law enforcement or crime prevention. *See* Gov't Code § 552.301(e)(1)(A). We therefore conclude that the department may not withhold any of the responsive information under section 552.108(b)(1) of the Government Code.

We also understand the department to raise section 552.108(b)(2) of the Government Code for the information at issue. Section 552.108(b)(2) excepts from disclosure "[a]n 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 . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(b)(2). You state "[t]here was no investigation" by the department. Thus, you have provided no arguments explaining how the information at issue relates to a criminal investigation that concluded in a result other than conviction or deferred adjudication. We therefore conclude the department may not withhold any of the information at issue under section 552.108(b)(2) of the Government Code. Accordingly, the responsive information must be released to the requestor.

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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 432672

Enc. Submitted documents

c: Requestor
(w/o enclosures)