



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 27, 2012

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2012-09940

Dear Ms. Cost:

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# 457628 (PIR No. 12-1106).

The Texas Department of Public Safety (the "department") received a request for all reports related to explosives since 1999.<sup>1</sup> You indicate you have released some information. You claim the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This section encompasses information other statutes make confidential, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Fam. Code § 58.007(c). Section 58.007 provides, in part:

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<sup>1</sup>We note the department sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

*Id.* § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Juvenile law enforcement records relating to juvenile delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007(c)). Upon review, we find the report you have marked under section 58.007 involves a child engaged in delinquent conduct that occurred after September 1, 1997. As such, we find the marked report is subject to section 58.007(c) of the Family Code. It does not appear any of the exceptions in section 58.007 apply to the information at issue. Therefore, the department must withhold the report you have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

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(a)(1) 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 information you have marked relates to active criminal investigations. Based on this representation, with the exception of report numbers C01A070175.1, C01A070175.2, C02A070088.1, C01B020081.1, C02C030155.2, C03B080139.1, C04A050211.1, C06C080067.1, C06C080067.2, and C06C080067.3, we conclude the release of the remaining information you have marked would interfere with the detection, investigation, or prosecution of crime. *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).

We note, however, report numbers C01A070175.1 and C01A070175.2 pertain to misdemeanor terroristic threats that occurred in 2007 and 2008, respectively. *See* Penal Code § 22.07(c)(2) (offense of terroristic threat is Class A misdemeanor if offense committed against public servant). Report number C02A070088.1 pertains to a misdemeanor harassment that occurred in 2007. *See id.* § 42.07(c) (offense of harassment is Class B misdemeanor or Class A misdemeanor if actor previously convicted under section 42.07). Report numbers C02C030155.2 and C03B080139.1 pertain to false alarms or reports that occurred in 2003 and 2008, respectively. *See id.* § 42.06(b) (offense of false alarm or report is Class A misdemeanor or state jail felony if involves a public service). Report number C04A050211.1 pertains to a misdemeanor possession of a hoax bomb in 2005. *See id.* § 46.08(b) (offense of possession of a hoax bomb is Class A misdemeanor). The statute of limitations for a misdemeanor is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02. More than two years have elapsed since the events giving rise to the investigations in report numbers C01A070175.1, C01A070175.2, C02A070088.1, C02C030155.2, and C04050211.1. In addition, report number C01B020081.1 pertains to a felony possession of prohibited weapons that occurred in 2002. *See* Penal Code § 46.05(e) (offense of possession of explosives is felony of third degree). Report number C06C080067.2 pertains to a felony possession of prohibited weapons and felony evading arrest or detention that occurred in 2008. *See id.*; *see also id.* § 38.04(b)(1)(B) (offense of evading arrest or detention is state jail felony if actor uses vehicle while in flight). Report numbers C06C080067.1 and C06C080067.3 pertain to felony possession of components of explosives and felony evading arrest or detention that occurred in 2008. *See id.* § 46.09(b) (offense of possession of components of an explosive is third degree felony); *see also id.* § 38.04(b)(1)(B). The statute of limitations for these felony offenses is three years from the date of the offense. *See* Crim. Proc. Code art. 12.01(7) (limitations on felony not otherwise listed in article 12.01 of Code of Criminal Procedure is three years from date of offense). More than three years have elapsed since the events giving rise to the investigations in report numbers C01B020081.1, C03B080139.1, C06C080067.1, C06C080067.2, and C06C080067.3. You have not informed this office any criminal charges were filed within the limitations periods. Thus, we find you have not demonstrated release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold report numbers C01A070175.1, C01A070175.2, C02A070088.1, C01B020081.1, C02C030155.2, C03B080139.1, C04A050211.1, C06C080067.1, C06C080067.2, and C06C080067.3 under section 552.108(a)(1) of the Government Code. Accordingly, with the exception of report numbers C01A070175.1, C01A070175.2, C02A070088.1, C01B020081.1, C02C030155.2, C03B080139.1, C04A050211.1, C06C080067.1, C06C080067.2, and C06C080067.3, we find the department may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) of the Government Code 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 . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (Gov’t Code § 552.108(b)(1) protects information that, 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). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state release of the reports you have marked “would provide wrong-doers, drug traffickers, terrorists, and criminals with invaluable information concerning our Criminal Investigations Division’s tracking of information on suspects.” Based on your representations, we have marked information the department may withhold under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated release of any of the remaining information would interfere with law enforcement or crime prevention. Therefore, the department may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be

withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. However, section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find the information we have marked consists of CHRI the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

We note some of the remaining information, and a portion of the information you have marked for release, is subject to section 552.130 of the Government Code, which excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit, or a motor vehicle title or registration, issued by an agency of this state or another state or country.<sup>2</sup> *Id.* § 552.130(a)(1)-(2). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the report you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of report numbers C01A070175.1, C01A070175.2, C02A070088.1, C01B020081.1, C02C030155.2, C03B080139.1, C04A050211.1, C06C080067.1, C06C080067.2, and C06C080067.3, the department may withhold the remaining information you have marked pursuant to section 552.108(a)(1) of the Government Code. The department may also withhold the information we have marked under section 552.108(b)(1) of the Government Code. The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law and the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>3</sup>

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

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<sup>2</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett", with a horizontal line extending to the right.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 457628

Enc. Submitted documents

c: Requestor  
(w/o enclosures)