ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2013

Mr. Brent A. Money
Counsel for the City of Greenville
Scott, Money & Ray, P.L.L.C.
P.O. Box 1353
Greenville, Texas 75403-1353

OR2013-05012

Dear Mr. Money:

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# 482426.

The Greenville Police Department (the "department"), which you represent, received a request for all reports made by a named individual at a specified address during a specified time period. You state you have released some information to the requestor. You claim the remaining 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.

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 case numbers 06-19309, 08-261, and 12-24502 pertain to active criminal investigations. Based on your representations and our review, we conclude the release of case number 12-24502 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).

However, we note case number 06-19309 pertains to a misdemeanor criminal trespass offense that occurred on September 2, 2006. *See* Penal Code § 30.05(d)(1) (offense of harassment is Class B misdemeanor). We further note case number 08-261 pertains to a state jail felony theft that occurred on January 4, 2008. *See id.* § 31.03(e)(3), (e)(4),(f)(3)(A) (offense of theft is Class A misdemeanor if the value of the property stolen is $500 or more but less than $1,500 but is increased to next higher category of offense if shown on trial of offense the owner of property appropriated was an elderly individual at the time of offense). The statute of limitations for a misdemeanor is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02(a) (indictment or information on Class B misdemeanor may be presented within two years from date of commission of offense, and not afterward). The statute of limitations for a felony theft is five years from the date of the offense. *See id.* art. 12.01(4)(A) (indictment or information on felony theft may be presented within five years from date of commission of offense, and not afterward). More than two years have elapsed since the events giving rise to the investigation of case number 06-19309 and more than five years have elapsed since the events giving rise to the investigation of case number 08-261. You have not informed this office any criminal charges were filed within the limitations period. Thus, we find you have not demonstrated release of case numbers 06-19309 and 08-261 would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold case numbers 06-19309 and 08-261 under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case 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 this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state case numbers 06-19314, 07-5817, 08-18327, 09-10672, and 12-11913 pertain to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representation and our review, we find section 552.108(a)(2) is applicable to case numbers 06-19314, 07-5817, 08-18327, 09-10672, and 12-11913.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open

Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold case number 12-24502 under section 552.108(a)(1) of the Government Code and case numbers 06-19314, 07-5817, 08-18327, 09-10672, and 12-11913 under section 552.108(a)(2) of the Government Code.[1]

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). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). A governmental body claiming section 552.108(b)(1) must explain how and why release of the information at issue would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques, but was not applicable to generally known policies and procedures. *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); *but see* 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). Although you contend section 552.108(b)(1) is applicable to case numbers 06-19309 and 08-261, we find you have not demonstrated the release of any of the information at issue would interfere with law enforcement. We therefore conclude the department may not withhold case numbers 06-19309 and 08-261 under section 552.108(b)(1) of the Government Code.

We note the remaining information contains information subject to sections 552.101 and 552.130 of the Government Code.[2] Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as chapter 411 of the Government Code, which deems

---

[1]As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

[2]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).

confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). 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. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F 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. *See 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. Furthermore, 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 Government Code chapter 411, subchapter F. Upon review, we find the information we have marked consists of CHRI the department must withhold from disclosure under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a)(1), (3). Therefore, we find the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold case number 12-24502 under section 552.108(a)(1) of the Government Code and case numbers 06-19314, 07-5817, 08-18327, 09-10672, and 12-11913 under section 552.108(a)(2) of the Government Code. The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The department must also withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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,

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 482426

Enc. Submitted documents

c: Requestor
(w/o enclosures)