



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2013

Ms. Cecilia Gamez
Lead CSS
Crime Records Office
City of McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2013-07014

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# 485637.

The McAllen Police Department (the "department") received a request for information related to a specified location during a specified time period and audio recordings of 9-1-1 calls made during a specified time period regarding a specified location. You claim 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.

Initially, we note you have not submitted information responsive to the request for the specified audio recordings. Therefore, to the extent information responsive to this aspect of the request exists, we assume you have released it to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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[.]” *Id.* § 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 report numbers 06-61116, 08-6505, 09-105393, 10-24939, and 11-16392, pertain to active criminal prosecutions. Although you also contend report number 10-49646 relates to a pending prosecution, we note you have not submitted this report for our review. You state the remaining reports pertain to active criminal investigations. Based on your representations and our review, we conclude the release of report numbers 06-61116, 08-6505, 09-105393, 09-120811, 09-12771, 10-24939, 11-4347, 11-7485, 11-16392, 11-20122, 11-53930, and 11-91400 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 the statutes of limitation for the remaining reports have expired. *See* Crim. Proc. Code art. 12.01(4) (felony indictment for theft must be presented within five years from date of offense); Crim. Proc. Code art. 12.01(7) (all other felonies not listed must be presented within three years from date of offense); Crim. Proc. Code art. 12.02(a) (indictment or information on Class A or Class B misdemeanor may be presented within two years from date of commission of offense, and not afterward); Crim. Proc. Code art. 12.02(b) (indictment or information on Class C misdemeanor may be presented within two years from date of commission of offense, and not afterward); *see also* Penal Code § 22.01(b)–(c) (assault under section 22.01 of the Penal Code is Class A, B, or C misdemeanor, or felony); Penal Code § 28.03(b)(1)–(3) (criminal mischief is a Class A misdemeanor if the pecuniary loss is \$500 or more, but less than \$1,500; a Class B misdemeanor if the pecuniary loss is \$50 or more, but less than \$500; and a Class C misdemeanor if the amount of pecuniary loss is less than \$50); Penal Code § 28.04(b) (reckless damage or destruction is Class C misdemeanor); Penal Code § 30.04(d) (burglary of vehicle is Class A misdemeanor or felony); Penal Code § 31.03 (theft is Class A, B, or C misdemeanor, or felony); Penal Code § 31.11(d) (tampering with identification numbers is Class A misdemeanor); Trans. Code § 550.021(c) (failure to stop and render aid is felony); Trans. Code § 550.022(c), (c-1) (accident involving damage to vehicle is Class B or C misdemeanor); Trans. Code § 550.024(b) (striking unattended vehicle is Class B or C misdemeanor); Trans. Code § 550.025(b) (striking structure, fixture, or highway landscaping is Class B or C misdemeanor). You have not informed this office any criminal charges were filed within the limitations periods for these offenses. Thus, we find you have not demonstrated release of the remaining reports would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the department may not withhold the remaining reports under section 552.108(a)(1) of the Government Code.

We note 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 report numbers 06-61116, 08-6505, 09-105393, 09-120811, 09-12771, 10-24939, 11-4347, 11-7485, 11-16392, 11-20122, 11-53930, and 11-91400 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). 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 the remaining reports, 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 the remaining reports under section 552.108(b)(1) of the Government Code.

We note the remaining information contains information subject to sections 552.101, 552.130, and 552.136 of the Government Code.¹ 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 the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus.*

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

Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally exempted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (finding personal financial information to include designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). Upon review, we find the personal financial information we have marked is highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country [or] a motor vehicle title or registration issued by an agency of this state or another state or country[.]” *See* Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. Thus, the department must withhold the insurance policy numbers and account number we have marked under section 552.136 of the Government Code.

In summary, with the exception of basic information, the department may withhold report numbers 06-61116, 08-6505, 09-105393, 09-120811, 09-12771, 10-24939, 11-4347, 11-7485, 11-16392, 11-20122, 11-53930, and 11-91400 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under sections 552.130 and 552.136 of the Government Code. The department must release the remaining information.²

²We 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).

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,

A handwritten signature in cursive script that reads "Jennifer Burnett". The signature is written in black ink and extends across the width of the page.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 485637

Enc. Submitted documents

c: Requestor
(w/o enclosures)