



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2009

Ms. T. Trisha Dang
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-02249

Dear Ms. Dang:

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# 335444.

The Corpus Christi Police Department (the "department") received a request for information pertaining to taser use by department officers during a specified time period.¹ 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.² We have also considered comments submitted by the requestor's employer. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that a portion of the submitted information, which we have marked, is not responsive to the instant request because it does not indicate the use of tasers by department officers. The department need not release non-responsive information in response to this request, and this ruling will not address that information.

¹The department sought and received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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). Generally, 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).

We note that section 552.108(a)(1) is generally not applicable to internal administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). The responsive information contains “use of force reports” and “resistance/injury/taser/o.c. reports,” which are administrative records. Although we are cognizant of the fact that use of force investigations are based on an underlying arrest or detention, the focus of these investigations is on the propriety of an officer’s conduct, not the underlying arrests. You do not state, nor does it appear, that the use of force reports and the resistance/injury/taser/o.c. reports in the submitted information relate to criminal investigations into an officer’s conduct. Accordingly, we conclude that the department may not withhold these reports, which we have marked, under section 552.108(a)(1).

You state, and the submitted information reflects that most of the remaining responsive information pertains to pending criminal investigations and prosecutions. Based upon your representations and our review, we find that the department has that section 552.108(a)(1) is generally applicable to case numbers 0712100014, 0802030038, 0806030014, 0807040004, 0808290007, 0808100015, 0809080141, 0810160012, and 0811020033. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information which must be released, the department may withhold case numbers 0712100014, 0802030038, 0806030014, 0807040004, 0808290007, 0808100015, 0809080141, 0810160012, and 0811020033 under section 552.108(a)(1) of the Government Code.³

³We note that you have the discretion to release all or part of case numbers 0712100014, 0802030038, 0806030014, 0807040004, 0808290007, 0808100015, 0809080141, 0810160012, and 0811020033 that is not otherwise confidential by law. Gov’t Code § 552.007.

Although you also seek to withhold the information relating to case number 0803030120 under section 552.108(a)(1), the submitted information reflects that case number 0803030120 is no longer pending and has been concluded with a guilty plea and a judgment of conviction. Thus, we find that the department has failed to demonstrate that release of the information relating to case number 0803030120 will interfere with the detection, investigation, or prosecution of crime. Therefore, the information relating to case number 0803030120 may not be withheld under section 552.108(a)(1).

We note, however, that case number 0803030120 contains information that is confidential under sections 552.101 and 552.130 of the Government Code.⁴ 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. This section encompasses information protected by other statutes. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. 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 (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 that the Texas Department of Public Safety ("DPS") maintains, except that the 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. *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. Thus, 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). A portion of the information in case number 0803030120 constitutes CHRI. We have marked the information the department must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.130 provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver's license number we have marked in case number 0803030120 under section 552.130.

In summary, the use of force reports and the resistance/injury/taser/o.c. reports must be released to the requestor. With the exception of basic information, which must be released,

⁴The 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).

the department may withhold case numbers 0712100014, 0802030038, 0806030014, 0807040004, 0808290007, 0808100015, 0809080141, 0810160012, and 0811020033 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in case number 0803030120 under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and section 552.130 of the Government Code. The remaining responsive information must be released to the requestor.⁵

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 at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 335444

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Hollis Grizzard, Jr.
Station Manager/News Director
KZTV-TV Action 10 News
301 Artesian
Corpus Christi, Texas 78401
(w/o enclosures)

⁵We note that the remaining information 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.