



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 11, 2011

Lt. Carol Taylor  
Commander – Communications/Records  
Taylor County Sheriff's Office  
450 Pecan Street  
Abilene, Texas 79602

OR2011-00568

Dear Lt. Taylor:

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# 405646.

The Taylor County Judge and Taylor County Sheriff's Office (collectively, the "sheriff") received a request for (1) documentation reflecting security policies and procedures at the Taylor County Jail (the "jail"); (2) records relating to security breaches that resulted in escapes or attempted escapes at the jail for the past five years; (3) incident reports on escapes or attempted escapes from the jail for the past five years, including those involving three named individuals; (4) records regarding disciplinary action taken against employees, inmates, or staff at the jail following an escape or attempted escape for the last five years; and (5) records on security equipment in place at the jail.<sup>1</sup> You state the sheriff has released some information to the requestor, including all information responsive to item five, above. You claim the remaining submitted information is excepted from disclosure under

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<sup>1</sup>You provide documentation showing the sheriff sought and received clarification from the requestor regarding this request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if 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); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (where governmental body seeks clarification or narrowing of request for information, ten-day period to request attorney general opinion is measured from the date request is clarified or narrowed).

section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An 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 is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

One submitted document you claim relates to an ongoing criminal case consists of an internal document evaluating a sheriff employee's role in one of the escapes. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (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); *see also* Open Records Decision No. 350 at 3-4 (1982). In this instance, you explain the submitted administrative report pertains to the underlying escape you state is under criminal investigation. You also represent the criminal cases pertaining to two of the submitted incident reports are open and pending. Based on these representations and our review, we determine release of most of the information in these reports 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, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the sheriff may withhold the reports we marked under section 552.108(a)(1).<sup>2</sup>

The remaining information consists of an incident report related to a case you state resulted in conviction and a document entitled Emergency Plan. Because the case is concluded, you failed to show how release of the incident report would interfere with the detection, investigation, or prosecution of crime. You also do not explain how the Emergency Plan document pertains to any pending criminal matter. Thus, we find you failed to demonstrate how the remaining information is subject to section 552.108(a)(1) of the Government Code, and it may not be withheld on that basis.

You also raise section 552.108(b)(1) for the remaining incident report and Emergency Plan document. This section 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, but was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines protected, but Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 456 (1987) (information regarding location of off-duty police officers protected), 413 (1984) (sketch showing security measures to be used at next execution 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 remaining incident report and Emergency Plan document will unduly interfere with law enforcement because release of the details of this escape and the sheriff's guidelines in emergencies would place individuals at an advantage in confrontations with jail detention officers and police. Based on these representations and our review, we agree release of the Emergency Plan document would interfere with law enforcement and crime prevention. However, you do not explain how release of the remaining incident report, which pertains to a particular incident that is now concluded, would interfere with law enforcement. Thus, we find you have failed to establish how release of the remaining information would interfere with law enforcement and crime prevention. Therefore, the

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

sheriff may withhold the submitted Emergency Plan under section 552.108(b)(1) of the Government Code, but may not withhold any of the remaining information on this basis.

We note some of the remaining information is subject to section 552.101 of the Government Code.<sup>3</sup> 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 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 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. 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 Government Code chapter 411, subchapter F. 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). The sheriff must withhold the CHRI we have marked in the remaining submitted information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.130 of the Government Code excepts 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] a motor vehicle title or registration issued by an agency of this state.” *Id.* § 552.130. The sheriff must withhold the Texas motor vehicle record information, which we have marked, under section 552.130 of the Government Code.<sup>4</sup>

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<sup>3</sup>The 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).

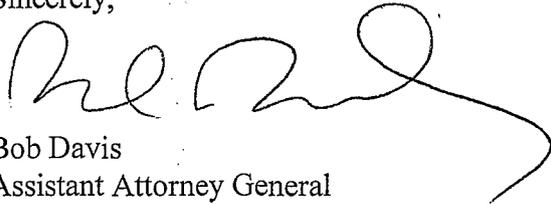
<sup>4</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, with the exception of basic information, the department may withhold the incident reports we marked under section 552.108(a)(1) of the Government Code. The department may also withhold the marked administrative document under section 552.108(a)(1). The department may withhold the submitted Emergency Plan document under section 552.108(b)(1) of the Government Code. The sheriff must withhold the information we marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code as well as the information we marked under section 552.130 of the Government Code. The remaining submitted information must be released.

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](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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tf

Ref: ID# 405646

Enc. Submitted documents

c: Requestor  
(w/o enclosures)