



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2015

Ms. Cecilia Gamez
Lead C.S.S.
Crime Records Office
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2015-09801

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# 567833.

The McAllen Police Department (the "department") received a request for a specified police report. You indicate the department is releasing some of the requested information. 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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal investigation by the department. However, we note the submitted report pertains to a state jail felony theft that occurred in 2005. *See* Penal Code § 31.04(e)(4)

(offense of theft of service is a state jail felony if the value of the service stolen is \$1,500 or more but less than \$20,000). The statute of limitations for a felony theft is five years from the date of the commission of the offense. *See* Crim. Proc. Code art. 12.01(4)(A) (indictment on felony theft may be presented within five years from date of commission of offense, and not afterward). More than five years have elapsed since the events giving rise to the investigation in the submitted police report. You have not informed this office any criminal charges were filed within the limitations period. Thus, we find you have not demonstrated release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold this information 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[.]” *Id.* § 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 Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that subsection 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You also seek to withhold the submitted information under section 552.108(b)(1). You generally state release of the submitted information “would interfere with the department’s ability to properly investigate and/or prosecute the criminal activity involved in the records.” Upon review, we find you have not demonstrated how release of any of the information at issue would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold the submitted information under section 552.108(b)(1).

As you raise no further exceptions to disclosure, the department must release the submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bhf

Ref: ID# 567833

Enc. Submitted documents

c: Requestor
(w/o enclosures)