



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 19, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0755

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113328.

The City of Houston (the "city") received an open records request for a variety of different records, including information about employees, telephone records, police manuals, police radar units, traffic citations, and traffic case prosecution. In response to the request, you submitted to this office for review a representative sample of the information which you assert is responsive.¹ You claim that portions of the requested records are excepted from disclosure by sections 552.108 and 552.117 of the Government Code. With respect to the categories of information for which you do not raise an applicable exception, we assume that you will release such information to the requestor, should it exist.² We have considered the exceptions you claim and have reviewed the information at issue.

We first consider the application of section 552.117 to the requested information. Section 552.117(1) of the Government Code requires that the city withhold its employees' home address, home telephone number, social security number, and any information

¹We 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)(where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

²We note that chapter 552 does not apply to information that does not exist. *See* Open Records Decision No. 555 (1990).

revealing whether the employee has family members, but only if the employee has elected to keep this information confidential in accordance with section 552.024 of the Government Code. Assuming the subject employees have made such an election, we conclude that these types of information must be withheld. However, even if such an election has not been made, we note that section 552.117(2) makes confidential the same categories of information pertaining to "a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code." Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

In your brief to this office, you claim that the "City will make phone records available to the requestor, but will redact all excepted information prior to release of the records." We agree that to the extent that section 552.117 is applicable to the requested information, the information must be redacted prior to the release of the records.

We next consider your assertion that section 552.108 of the Government Code - excepts portions of the requested information from required public disclosure. Section 552.108, the "law enforcement exception," provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

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

....

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Gov't Code § 552.108.

In your brief to this office, you claim that the "identifying information contained in the vehicle maintenance records for unmarked [police department] vehicles . . . would potentially undermine the clandestine nature of those vehicles." You further contend, "[i]n reference to phone numbers found in [the police department's] long distance and cellular records that are incident to ongoing criminal investigations, the Attorney General has previously determined that cellular phone numbers, the use of which are designed for specific law enforcement responsibilities, are excepted from public disclosure." *See* Open Records Decision No. 506 (1988) (law enforcement exception protects from public disclosure cellular phone numbers assigned to vehicles used for specific law enforcement responsibilities). Based on the submitted information and your arguments, we agree that

the material at issue is information of a law enforcement agency that deals with the investigation and prosecution of crime, the release of which would interfere with detection, investigation, or prosecution of crime.³ Accordingly, we conclude that the city may withhold the information at issue from the requestor based on section 552.108(a)(1).

You inform this office that the city has informed the requestor of the charges involved in redacting confidential information from and processing the requested information. This office does not address cost questions arising from requests for public information under the Open Records Act. Section 552.261 of the Government Code provides that the cost of providing copies of public information "shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead." The Texas General Services Commission sets rules specifying the methods and procedures for determining such costs. Gov't Code § 552.262. Consequently, you should contact the Texas General Services Commission if you have questions concerning the cost of providing copies of public information. We suggest that you contact the open records administrator at the General Services Commission at (512) 475-2497.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 113328

Enclosures: Submitted documents

³However, we disagree with your broad assertion that "all of the Houston Police department's cellular phone numbers," should be excepted from disclosure. See Open Records Decision Nos. 434 (1986) at 2, 287 (1981) at 2 (whether information falls within section 552.108 must be determined on a case-by-case basis).

cc: Mr. J.D. Davis
Director
American Driver's Association
200 Gateway Center, Suite 326
Liberty City, Texas 75662
(w/o enclosures)