



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 24, 2003

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of College Station  
P. O. Box 9960  
College Station, Texas 77842

OR2003-1986

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178261.

The City of College Station (the "city") received a request for the following information regarding a named police officer:

1. Any and all complaints filed by private citizens, other members of law enforcement, the City of College Station or the City of College Station Police Department against the above referenced officer;
2. Any and all names of persons interviewed in the course of investigating said complaints;
3. Any and all written responses of the above referenced officer to such complaints;
4. Any and all final determinations regarding the above said complaints, including but not limited to, any reductions in pay, demotions in rank, required counseling, or corrective training;
5. Any and all letters advising of any disciplinary action related to said complaints;

6. Proof that the above referenced officer completed any recommended counseling or corrective training as a result of a complaint being filed against him or her;
7. The above referenced officer's employment background;
8. The above referenced officer's original application to become a police officer which was submitted to the City of College Station Police Department;
9. Any and all police academy scores and/or evaluations which are in the possession of the City of College Station Police Department and/or the City of College Station regarding the above referenced officer;
10. Any and all certificates of completion concerning continuing law enforcement training in the possession of the City of College Station Police Department and/or the City of College Station regarding the above referenced officer;
11. Any and all evaluations and/or scores concerning continuing law enforcement training in the possession of the City of College Station Police Department and/or the City of College Station regarding the above referenced officer;
12. The current salary of the above referenced officer;
13. The current amount of overtime pay for the year of 2002 accumulated by the above referenced officer as of the date of this request; [and]
14. Any and all specialized units (i.e. drug task force, DWI task force, etc.) that the above referenced officer has been assigned to while employed by the City of College Station Police Department.

You state that information responsive to categories 12 and 13 (the officer's salary and overtime information) has been released to the requestor with certain addresses, telephone numbers, social security numbers, and personal family information redacted pursuant to a previous determination. *See* Open Records Decision No. 670 (2001). You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that section 552.108 of the Government Code excepts the submitted information from public disclosure. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain 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(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the police officer whose records are at issue was the arresting officer in a DWI case that is currently pending in Brazos County Court. You state that this officer is the State's main witness in the pending criminal prosecution and that the submitted information relates to the pending litigation because "it is used at trial to determine the credibility of this witness, his competency to testify, and his qualification as an expert witness." You have also submitted a letter from an Assistant County Attorney for Brazos County stating that the requested information relates to an ongoing prosecution, and that release of the requested information would interfere with that pending prosecution. Based on these representations and our review of the submitted information, we conclude that the release of the submitted information 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. As we are able to make this determination, we need not address your argument under section 552.103 of the Government Code.

You also request that this office issue a previous determination allowing the city to withhold police officers' personnel records maintained by the city under sections 552.103 and 552.108 of the Government Code. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that, with the exception of categories 12 and 13 listed above (the officer's salary and overtime information), the remaining 12 categories of information may be withheld under section 552.108(a)(1) of the Government Code. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001). This previous determination applies only to the following types of information requested of the city related to a specific police officer: (1) complaints filed by private citizens, other members of law enforcement, the city, or the city's police department against the officer; (2) names of persons interviewed in the course of investigating the complaints; (3) written responses of the officer to such complaints; (4) final determinations regarding the complaints, including reductions in pay, demotions in rank, required counseling, or corrective training; (5) letters advising of any disciplinary action related to the complaints; (6) proof that the officer completed any recommended counseling or corrective training as a result of a complaint being filed against him or her; (7) the officer's employment background; (8) the officer's original application to become a police officer which was submitted to the city's police department; (9) police academy scores and/or evaluations in the possession of the city and/or the city's police department regarding the officer; (10) certificates of completion concerning continuing law enforcement training in the possession of the city or the city's police department regarding the officer; (11) evaluations and/or scores concerning continuing law enforcement training in the possession of the city and/or the city's police department regarding the officer; and (12) specialized units to which the officer has been assigned while employed by the city. This previous

determination applies only when there is pending prosecution where the officer in question is the arresting officer in a DWI case, the officer will be a witness in the prosecution, and the information is the type of information used at trial to determine the credibility of the officer, competency to testify, and qualification as an expert witness. Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the city need not ask for a decision from this office again with respect to this type of information requested of the city under Chapter 552 of the Government Code. *See id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 178261

Enc. Submitted documents

c: Jim W. James  
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(w/o enclosures)