



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2004

Ms. J. Middlebrooks
Assistant City Attorney
Dallas Police Department
1400 South Lamar Street
Dallas, Texas 75215

OR2004-10052

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213649.

The Dallas Police Department (the "department") received a request for information relating to a particular department police officer, including the officer's employment application, background investigator's preemployment report, personal history statement, internal affairs history, and e-mail correspondence among the command staff relating to pending discipline for an alleged aggravated assault.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹The request excludes the officer's social security number, health information, family information and home address.

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. We have marked a document that is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Initially, we note that you did not submit any e-mail correspondence. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request existed on the date that the department received the instant request, we assume that the department has released it to the requestor. If the department has not released any such information, the department must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You contend that some of the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a) 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: (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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the information you seek to withhold relates to an administrative investigation concerning allegations that an officer committed aggravated assault. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See 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, however, you inform us that the information at issue also relates to a pending criminal investigation with the Dallas District Attorney's Office (the “DA”). You state that the DA objects to the release of the information at issue under section 552.108. Thus, we understand you to contend that the release of the information at issue would interfere with the detection, investigation, and prosecution of a crime. Based on your representations, the representations of the DA, and our review of the information, we find that section 552.108(a)(1) is applicable to the information you have marked. *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); *see also* Open Records Decision No. 372 at 4 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of information relating to incident allegedly involving criminal conduct that remains under active investigation or prosecution).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. The submitted documents include information relating to a polygraph examination. Section 1703.306 of the Occupations Code provides

that “[a] governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.” Occ. Code § 1703.306(b). The department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security number, and family member information of a peace officer regardless of whether the officer requests confidentiality for that information under section 552.024 or 552.1175 of the Government Code.³ The department must withhold the officer’s home telephone number, which we have marked, from disclosure under section 552.117(a)(2). *See* Open Records Decision No. 622 (1994). We note that the remaining section 552.117 information you seek to withhold is specifically excluded by the precise language of the request. Although you raise section 552.117 for the officer’s home address, social security number, and family member information, the requestor has excluded this information from her request. Accordingly, any of this information within the submitted documents is not responsive to the present request and need not be released to the requestor.

The submitted information also includes a social security number that does not belong to the named officer. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

You raise section 552.130 with regard to Texas driver’s license information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

³“Peace officer” is defined by article 2.12 of the Code of Criminal Procedure.

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We find that you must withhold the information you have marked under section 552.130.

Next, we note that the submitted information includes the officer's employee number. You state that this number is used as a city credit card account number. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The department must, therefore, withhold the employee number under section 552.136.

In summary, the department may withhold some of the submitted information under section 552.108(a)(1). The department must withhold: 1) the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code; 2) the marked information under section 552.117(a)(2); 3) the driver's license information under section 552.130; and 4) the officer's employee number under section 552.136. The social security number may be excepted from disclosure under federal law. The remaining responsive information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

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

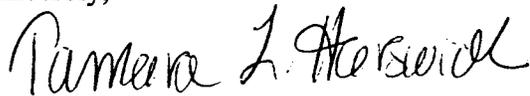
should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 213649

Enc. Submitted documents

c: Ms. Tanya Eiserer
The Dallas Morning News
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(w/o enclosures)