



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2005

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law & Police Section
City of Dallas
1400 South Lamar Street #300A
Dallas, Texas 75215-1801

OR2005-11065

Dear Ms. Middlebrooks:

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# 237707.

The Dallas Police Department (the "department") received a request for information pertaining to a named department officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.1175, 552.127, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the requestor does not seek the officer's social security number, health information, family information, or home address. These types of information in the submitted documents are thus not responsive to the request for information, and the department is not required to release that information in response to this request.

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). 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.

See Econ. Opportunities Dev. Corp. v. Bustamante, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

We also note that a portion of the submitted information was the subject of a previous request for information, in response to which this office issued Open Record Letter No. 2005-10023 (2005). As some of the submitted information is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, the department must continue to rely on this ruling as a previous determination and withhold or release this information in accordance with Open Record Letter No. 2005-10023 (2005). *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We next address the remaining submitted information that was not subject to Open Records Letter No. 2005-10023. 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). However, section 552.108 is generally not applicable to the records of an internal investigation that is purely administrative in nature. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). You state that the criminal prosecution by the Tarrant County District Attorney’s Office of Brian Payne is ongoing and that office still objects to the release of the information at issue because it would interfere with a pending criminal prosecution. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Accordingly, we agree that the submitted information is subject to section 552.108(a)(1).

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ refused n.r.e. per curiam*,

536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the submitted information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "L. Joseph James". The signature is fluid and cursive, with a long horizontal stroke at the end.

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/segh

Ref: ID# 237707

Enc. Submitted documents

c: Ms. Tanya Eiserer
Staff Writer
Dallas Morning News
508 Young Street
Dallas, Texas 75202
(w/o enclosures)