



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2006

Ms. Charlotte L. Staples
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2006-06906

Dear Ms. Staples:

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# 252744.

The City of Richland Hills (the "city"), which you represent, received a request for information relating to a named city police officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). We note that section 552.108 is generally not applicable to personnel records. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) not applicable to background and reference information police department obtained from third parties regarding applicants for employment); Open Records Decision No. 562 at 10 (1990) (statutory predecessor to Gov't Code § 552.108

generally not applicable to general personnel information or information relating to complaints filed against police officer).

Section 552.108 may be claimed, however, by any proper custodian of information relating to an incident involving allegedly criminal conduct that remains under active investigation or prosecution. See Open Records Decision No. 372 (1983) (addressing statutory predecessor). In this instance, you inform us that the officer who is the subject of the submitted information "is the arresting officer in several DWI cases that are currently pending in the Tarrant County District Court." You contend that the submitted information relates to the prosecution and that the release of the information at this time would interfere with the prosecution of these cases. In addition, you have submitted an affidavit from an Assistant District Attorney in the Tarrant County District Attorney's Office who states that release of the requested information would interfere with the prosecution of crime. Based on the city's representations and those of the district attorney's office, we find that the release of the submitted information at this time would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1); *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). We therefore conclude that the city may withhold all of the submitted information under section 552.108(a)(1). As we are able to make this determination, we need not address the other exceptions you claim.

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*, 342 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/sdk

Ref: ID# 252744

Enc. Submitted documents

c: Mr. Brian J. Guerra
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(w/o enclosures)