



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2007

Mr. David Kemp
Assistant County Attorney
Potter County, Texas
500 South Fillmore Street, Room 303
Amarillo, Texas 79101

OR2007-16172

Dear Mr. Kemp:

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# 296783.

The Potter County Sheriff's Office (the "sheriff") received a request for 1) any records relating to the leave without pay and transfer of a specified peace officer and 2) any records relating to the termination or resignation of a specified peace officer, as well as information relating to a drunk driving incident. You state that the sheriff does not have responsive documents relating to a drunk driving incident.¹ You argue that a portion of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code §§ 552.108(b)(2). 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(b)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(b)(2) is applicable only if the information in question relates to the detection, investigation, or prosecution of crime, and the concluded criminal case did not result in a conviction or a deferred adjudication. Section 552.108 generally is not applicable to an internal administrative investigation involving a law enforcement officer. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. 2002, no pet.); Open Records Decision Nos. 562 at 10 (1990), 350 at 3-4 (1982).

The information you seek to withhold under section 552.108 consists of witness names contained in internal administrative investigations of law enforcement officers. You claim that the information at issue should not be disclosed because disclosure of the identities of the witnesses might harm the prospects of future cooperation. This office has previously determined that, when it can be established from an examination of the facts of a particular case that disclosure of witness identities and statements might subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation, that information may be excepted from disclosure under the predecessor to section 552.108. Open Records Decision Nos. 329 (1982), 313 (1982), 297 (1981), 252 (1980). However, after review of your arguments and the information at issue, we find that the sheriff has not reasonably explained how release of this information would subject the witnesses to possible intimidation or harassment. Further, the sheriff acknowledges that the submitted information does not relate to criminal investigations. Therefore, the sheriff may not withhold the information at issue under section 552.108 of the Government Code.

We note that the submitted information contains personal information subject to section 552.117 of the Government Code.² Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

sections 552.024 or 552.1175 of the Government Code.³ Accordingly, the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

In summary, the sheriff must withhold the peace officer's personal information we have marked under section 552.117 of the Government Code. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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).

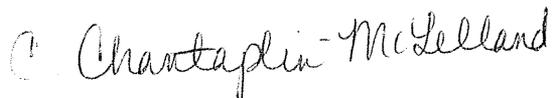
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

³Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

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 cursive script that reads "Chanita Chantaplin-McLelland".

Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/jb

Ref: ID# 296783

Enc. Submitted documents

cc: Mr. Sean Thomas
Amarillo Globe-News
900 South Harrison
Amarillo, Texas 79101
(w/o enclosures)