



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2008

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2008-15394

Dear Ms. McClellan:

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# 327220.

The Dallas Police Department (the "department") received a request for information regarding the three senior corporal vacancies for the Warrant and At Large Case Processing positions. You claim portions of the submitted information are excepted from disclosure under sections 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The department need not release nonresponsive information in response to this request and this ruling will not address that information.

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.

You contend the marked officers' cellular telephone numbers are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." ORD 506 at 2. We noted the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You inform us the marked officers' cellular telephone numbers are used by the officers in the field to carry out law enforcement responsibilities. You assert the release of this information would interfere with law enforcement because it would interfere with the ability of the officers to perform their duties. Based on your representations and our review of the information at issue, we conclude the department may withhold the cellular telephone numbers you have marked under section 552.108(b)(1) of the Government Code.

Next, you claim section 552.117 of the Government Code for portions of the remaining information. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). In this case, it is unclear whether the marked information pertains to licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. If the marked information does pertain to licensed peace officers as defined by article 2.12, the department must withhold the personal information you have marked pursuant to section 552.117(a)(2) of the Government Code.

If the marked information does not pertain to licensed peace officers, then this information may be excepted under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the

request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The department may only withhold information under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals at issue timely elected confidentiality, the department must withhold the marked personal information under section 552.117(a)(1). The department may not withhold this information under section 552.117(a)(1), however, if the individuals at issue did not make timely elections to keep the marked personnel information confidential.

Section 552.136 (b) 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. You inform us that an employee’s identification number is also used as an employee’s credit union bank account number. Thus, the department must withhold the information you have marked under section 552.136.

In summary, the department may withhold the cellular telephone numbers it has marked under section 552.108(b)(1) of the Government Code. If the personal information you have marked pertains to licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold this personal information pursuant to section 552.117(a)(2) of the Government Code. If the information does not pertain to peace officers, then the department must withhold the marked personal information under section 552.117(a)(1) of the Government Code, if the individuals at issue timely elected under section 552.024 of the Government Code. The department must withhold the account numbers you have marked under section 552.136 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). If the governmental body does not file suit over 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).

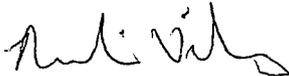
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 327220

Enc. Submitted documents

c: Ms. Gloria Doll
303 North Winnetka
Dallas, Texas 75208
(w/o enclosures)