



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2009

Mr. Russell Brown
Records Manager
Bellaire Police Department
5110 Jessamine
Bellaire, Texas 77401-4495

OR2009-04193

Dear Mr. Brown:

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# 338560.

The Bellaire Police Department (the "department") received three requests for information related to two specified incidents. You state that you have released some of the requested information. You state you have no information responsive to a portion of two of the requests.¹ You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.1175 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the request for the incident on January 1, 2009. Therefore, to the extent this information existed when the present request was received, we assume it has been released. If such information has not

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² Although you raise section 552.117 for portions of the submitted information, we note section 552.1175 is the proper exception in this instance because the department does not hold the submitted information in an employment capacity.

been released, then it must be released in its entirety at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note some of the remaining requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-02211 (2009), 2009-01033 (2009), and 2009-02437 (2009). To the extent the pertinent facts and circumstances have not changed since the issuance of these rulings, the department may continue to rely on Open Records Letter Nos. 2009-02211, 2009-01033, and 2009-02437 for the information that was at issue in these prior rulings. *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as a previous determination when (1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); (2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; (3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and (4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). To the extent the remaining requested information is not the same as the information previously ruled upon, we will address the submitted arguments.

You claim that portions of the submitted information are excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 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 at issue pertains to a pending criminal investigation. Based on this representation and our review, we conclude that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold the information at issue under section 552.108(a)(1).

You claim that a portion of the remaining information is excepted from disclosure under section 552.1175 of the Government Code. Section 552.1175 of the Government Code provides in part as follows:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). We note that section 552.1175 encompasses a personal cellular telephone number, provided that the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). You indicate a portion of the remaining information pertains to a police officer. Upon review, if the police officer at issue elects to keep the types of information in subsection (b) confidential in accordance with section 552.1175(b)(2), the department must withhold the information we have marked under section 552.1175. If the peace officer does not elect to keep this information confidential in accordance with section 552.1175(b)(2), then the information we have marked may not be withheld under section 552.1175.

We note that the remaining information appears to contain information subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.³ Gov't Code § 552.130. The department must withhold the information we have marked under section 552.130.

In summary, to the extent the responsive information is encompassed by Open Records Letter Nos. 2009-02211, 2009-01033, and 2009-02437, the department may continue to rely on these rulings as a previous determination and withhold or release the identical information in accordance with those rulings. To the extent the information is not identical to the previous rulings, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.1175 of the Government Code if the police officers at issue elect to keep the types of information in subsection (b) confidential in accordance with section 552.1175(b)(2). The department must withhold the information we

³ The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

have marked under section 552.130 of the Government Code. The remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'CS', followed by a long, sweeping horizontal line that extends across the page.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 338560

Enc. Submitted documents

cc: Requestor
(w/o enclosures)