



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-13465

Dear Mr. Griffith:

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# 357237.

The Town of Flower Mound (the "town"), which you represent, received a request for all records relating to a specific vehicle training accident involving a Flower Mound police officer, as well as the employment history and motor vehicle accident history of the officer and information regarding any complaints, violations, suspensions, and disciplinary measures against the officer. You state you have released some information to the requestor. You provide documentation stating there are no other motor vehicle accidents, complaints, violations, suspensions, or disciplinary actions involving the officer.¹ You claim that the submitted 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ...

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

if ... it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication [.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Section 552.108 is ordinarily not applicable to internal administrative records that are not related to an investigation or prosecution of crime. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). The submitted information consists of personnel records and records pertaining to an administrative investigation. You do not explain how this administrative investigation directly pertains to a criminal case that concluded in a final result other than conviction or deferred adjudication, nor have you explained how its release would interfere with the detection, investigation, or prosecution of crime. Therefore, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information. *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. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the town may not withhold any of the submitted information under section 552.108(a)(2) of the Government Code.

We note, however, that some of the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code.² Gov’t Code § 552.117(a)(2). The submitted information includes the home address and telephone number of two peace officers employed by the town. Accordingly, the town must withhold the information we have marked pursuant to section 552.117(a)(2).

We further note that some of the remaining information may fall under section 552.1175 of the Government Code. Section 552.1175 provides in part:

(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“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

(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.

Id. § 552.1175(b). The submitted information includes addresses and home telephone numbers of peace officers who are not town employees. To the extent these individuals are currently licensed peace officers who elect with the town to restrict public access to their personal information, the town must withhold the information we have marked under section 552.1175. To the extent either of these individuals is not a currently licensed peace officer who elects with the town to restrict public access to their personal information, the town may not withhold information pertaining to that individual under section 552.1175.

Next, we note the remaining information contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle record issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Therefore, the town must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Finally, we note the remaining information contains an e-mail address. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address at issue is not of a type specifically excluded by section 552.137(c). Therefore, the town must withhold the e-mail address we have marked in accordance with section 552.137, unless the town receives consent for its release.

In summary, the town must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code. The town must withhold the information we have marked under section 552.1175 to the extent the individuals to which the information pertains are currently licensed peace officers who elect with the town to restrict public access to their personal information. The town must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. Unless the town receives consent for release of the e-mail address we have marked, the town must withhold that e-mail address in accordance with section 552.137 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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 357237

Enc. Submitted documents

c: Requestor
(w/o enclosures)