



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 9, 2009

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
1400 S. Lamar  
Dallas, Texas 75215

OR2009-14324

Dear Ms. Middlebrooks:

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# 358047 (DPD Request No. 09-5813).

The Dallas Police Department (the "department") received a request for information pertaining to a specified internal affairs investigation. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.<sup>1</sup>

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-04038 (2009). In that ruling, we determined the department must release the information subject to section 552.022(a)(17). We also determined the department may withhold the information you have marked under section 552.108(a)(1), and must withhold the information marked under section 552.101 in conjunction with chapter 411 of the

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<sup>1</sup>We 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.

Government Code and common-law privacy. We conclude that, as we have no indication the law, facts, and circumstances on which this prior ruling was based have changed, the department must continue to rely on this ruling as a previous determination and withhold or release the information at issue in accordance with Open Records Letter No. 2009-04038. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). For the submitted information not previously requested and ruled upon by this office, we will address your arguments.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, 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). The information you seek to withhold under section 552.108 is related to an internal affairs investigation conducted by the department. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *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); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you explain that the submitted information relates to a pending criminal investigation and prosecution. Based upon this representation and our review, we conclude that the release of the information 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. per curiam*, 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 you have marked under section 552.108(a)(1).<sup>2</sup>

You assert that the employee identification number you have marked is confidential under section 552.136(b) of the Government Code, which 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, with the addition of one digit, is also used as an employee’s credit union bank account number. Thus, we agree that this information is subject to section 552.136. Therefore, the department must

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

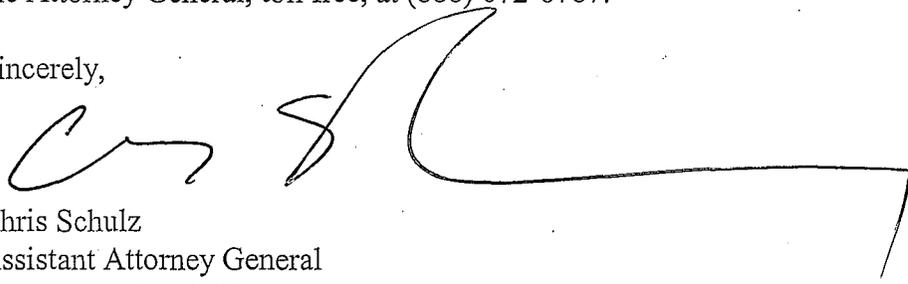
withhold the information you have marked, as well as the information we have marked, under section 552.136 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2009-04038 and withhold or release the information subject to the prior ruling. The department may withhold the information you have marked under section 552.108(a)(1). The department must withhold the information you have marked under section 552.136. 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](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,

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long horizontal flourish extending to the right.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 358047

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)