



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 8, 2010

Mr. Joe Hegar
Attorney at Law
P.O. Box 35
Katy, Texas 77492-0035

OR2010-01855

Dear Mr. Hegar:

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# 369464.

The Katy Police Department (the "department"), which you represent, received a request for the report, video, and audio from a named officer for a specified incident, the reports, audio, video, e-mails, and letters related to a specified investigation, and all citations and police reports issued in the past four years by a named officer. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that some of the requested information regarding all citations and police reports issued in the past four years by a named officer was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2010-00500 (2010). In that ruling, we determined that the department must withhold a portion of the requested information under sections 552.101 and 552.130 of the Government Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the department must rely on Open Records Letter No. 2010-00500 as a previous determination and continue to treat the previously ruled upon information in accordance with that ruling.¹ *See* Open Records Decision No. 673 (2001) (so

¹As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure.

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).

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(a)(1) 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 inform us that the submitted information in Exhibit B and the related compact discs pertain to a pending prosecution. Based on your representation and our review, we conclude that the release of this 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, section 552.108(a)(1) is applicable to the information in Exhibit B and the compact discs we have marked.

However, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Thus, the department must release the types of basic information listed in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold the submitted information in Exhibit B and the marked compact discs under section 552.108 of the Government Code.²

You claim the information in Exhibit C, as well as the remaining audio recording from the requestor, is subject to section 552.108(a)(2) of the Government Code. 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 . . . if: (2) 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 conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why

²As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure.

exceptions raised should apply to information requested); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is not applicable to records of an internal affairs investigation that is purely administrative in nature and did not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer); *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). Upon review, the documents in Exhibit C reflect that they were generated as part of an internal administrative investigation conducted by the department. You do not provide any arguments explaining how the internal investigation resulted in a criminal investigation or prosecution. Accordingly, the department may not withhold any portion of Exhibit C or the remaining audio recording under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”³ Gov’t Code § 552.101. Section 552.101 encompasses chapter 560 of the Government Code, which governs the public availability of fingerprints. Section 560.003 of the Government Code provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* §§ 560.003; .001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002 (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Thus, the department must withhold the fingerprints we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 of the Government Code.⁴ *Id.* § 552.117(a)(2). Therefore, the department must withhold the information we have marked in Exhibit C under section 552.117(a)(2) of the Government Code. Furthermore, the department must withhold this type of information from the remaining audio recording. In the event the department does not have the technological capacity to redact the officer’s home address and family member information from the remaining recording, the department must withhold the audio recording in its entirety.

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

⁴“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

In summary, (1) the department must rely on Open Records Letter No. 2010-00500 as a previous determination and continue to treat the previously ruled upon information in accordance with that ruling; (2) with the exception of basic information, the department may withhold the information in Exhibit B, and the marked compact discs, under section 552.108(a)(1) of the Government Code; and (3) the department must withhold the information we have marked in Exhibit C and the audio recording under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and under section 552.117(a)(2) of the Government Code. If the department does not have the technological capacity to redact the officer's home address and family member information from the remaining recording, the department must withhold the audio recording in its entirety. 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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 369464

Enc. Submitted documents

c: Requestor
(w/o enclosures)