



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2010

Mr. W. Lee Auvenshine
Assistant Ellis County & District Attorney
Ellis County & District Attorney
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2010-04512

Dear Mr. Auvenshine:

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# 375468.

The Ellis County Sheriff's Office (the "sheriff") received a request for (1) any complaint, incident report, memorandum, communication, or other documentary evidence that an assault involving a named corporal occurred during a specified time period; (2) any documentary evidence of suspension, administrative leave, internal investigation, or referral of disciplinary matters involving the named corporal during a specified time period; and (3) a list of all suspensions, firings, hires, demotions, and officer commissions since the beginning of 2010. You state the sheriff has produced information responsive to the third item of the request. You claim the submitted information is excepted from disclosure under sections 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information consists of a completed administrative investigation, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). Although you raise section 552.111 of the Government Code, section 552.111 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Open*

Records Decision Nos. 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the sheriff may not withhold any portion of the submitted information under section 552.111. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.108 and 552.130, we address your arguments under these exceptions.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.,* Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code

provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

The information you seek to withhold under section 552.108 relates to an internal affairs investigation. 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). You state the submitted information relates to a pending criminal investigation. Based on your representation and our review, we conclude that release of the submitted incident report, call for service report, related communications with the district attorney, and the related administrative investigation report containing discussions of the underlying crime, all of which we have marked, 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, we conclude section 552.108(a)(1) is applicable to the information we have marked. However, the remaining information, which consists of time sheets and use of force policies, pertains to purely administrative matters. You have not explained how the submitted time sheets and use of force policies relate to the criminal investigation at issue. Additionally, you have provided no arguments explaining how and why release of the time sheets and use of force policies would interfere with law enforcement and crime prevention. Consequently, we find you have failed to show the applicability of subsections 552.108(a)(1) and 552.108(b)(1) to the time sheets and use of force policies. Therefore, the sheriff may not withhold the remaining information under either section 552.108(a)(1) or section 552.108(b)(1).

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Thus, with the exception of basic information, the sheriff may withhold the information we have marked under section 552.108(a)(1).¹

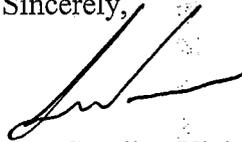
¹As our ruling is dispositive for this information, we do not address your remaining argument against disclosure of portions of this information.

In summary, except for basic information, the sheriff may withhold the information we have marked under section 552.108(a)(1) of the Government Code.² The sheriff must release the remaining information to the requestor.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 375468

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the basic information contains the arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).