



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2010

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2010-15835

Dear Mr. Reinwand:

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# 397226 (APD Reference No. 1651-080810).

The Arlington Police Department (the "department") received a request for (1) all internal affairs records pertaining to all police officers who responded to a specified call, including six named officers; (2) all video and audio recordings for the same officers from a specified time period; and (3) all mobile data transmission communications between police units, police dispatch, radio dispatch, the dispatch center, and police headquarters during the same time period. The submitted information reflects there are no internal affairs records concerning one of the named officers.¹ You claim 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.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the requested three categories of information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

Next, we note the responsive information consists of internal affairs records and a DVD of a dashboard camera. To the extent information pertaining to the mobile data transmission communications existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See*

¹The 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 dismissed); 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).

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).

We now turn to your argument under section 552.108 of the Government Code for the responsive information. Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In this instance, the submitted information, in part, consists of information pertaining to internal affairs investigations by the city's police department. We note that section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does 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.), *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). You assert the submitted internal affairs investigation information relates to a pending criminal investigation. We note the pending criminal investigation pertains to a charge of driving while intoxicated. The submitted internal administrative investigation information does not pertain to this incident. Therefore, we find you have not explained how the administrative investigation information directly pertains to the pending criminal investigation. Furthermore, you have not explained how or why releasing the submitted administrative investigation information would interfere with the detection, investigation, or prosecution of crime. *See* 531 S.W.2d 177. Consequently, you have failed to demonstrate the applicability of section 552.108(a)(1) to the submitted administrative investigation information. Accordingly, the submitted administrative investigation information may not be withheld under section 552.108(a)(1) of the Government Code.

The remaining information consists of a DVD of a driving while intoxicated traffic stop. We find that release of the submitted DVD, which pertains to the driving while intoxicated investigation, would interfere with the detection, investigation, or prosecution of crime. *See* 531 S.W.2d 177. Therefore, the department may withhold the submitted DVD pursuant to section 552.108(a)(1) of the Government Code.

We note a portion of the remaining information is subject to section 552.117 of the Government Code.² Section 552.117(a)(2) excepts from disclosure the home address, home

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

telephone number, personal pager and cellular telephone numbers, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. The department must withhold the social security numbers we have marked in the internal affairs records under section 552.117(a)(2).³

In summary, the department may withhold the submitted DVD under section 552.108 of the Government Code. The department must withhold the marked social security numbers under section 552.117 of the Government Code. The remaining responsive 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/em

Ref: ID# 397226

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes a governmental body to withhold the home addresses and telephone numbers, personal pager and cellular telephone numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.