



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2010

Mr. Adam Franco
Senior Assistant City Attorney
Legal Department
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2010-18728

Dear Mr. Franco:

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# 402854.

The City of College Station (the "city") received a request for named officers' civil service files. You state the city is withholding four officers' civil service files pursuant to the previous determination issued to the city in Open Records Letter No. 2003-1986 (2003) (permitting the city to withhold, without seeking a decision from this office, certain information from an officer's civil service file under section 552.108(a)(1) of the Government Code where there is a pending prosecution, the officer is the arresting officer in a DWI case, the officer will be a witness in the prosecution, and the information is the type of information used at trial to determine the credibility of the officer, competency to testify, and qualification as an expert witness). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state the city has released three officers' civil service files with certain information redacted under sections 552.117 and 552.1175 of the Government Code.¹ You claim the submitted information related to one officer is excepted

¹We understand these redactions were made pursuant to section 552.024(c)(2) of the Government Code, section 552.1175(f) of the Government Code, and/or Open Records Decision No. 670 (2001). *See* Gov't Code §§ 552.024(c)(2) (authorizing governmental bodies to redact certain personal information pertaining to employees who properly elected to keep their information confidential without the necessity of requesting a ruling from this office if proper notice is provided to requestor pursuant to section 552.024(c-2)), .1175(f) (authorizing governmental bodies to redact certain information excepted under section 552.1175(b) without the necessity of requesting a decision from the attorney general if proper notice is provided to requestor pursuant to section 552.1175(h)); ORD 670 (authorizing governmental bodies to withhold certain personal information of peace officers under section 552.117(a)(2) without the necessity of requesting attorney general decision).

from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing an interested party may submit comments stating why information should or should not be released).

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” *See id.* § 552.108(a)(1). 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). You state the officer whose civil service file is at issue is the arresting officer and expected to be a primary witness in a criminal case for theft that is currently pending in the Brazos County Court at Law No. 1. You contend the information at issue could be used at trial to undermine the credibility of the officer, his competency to testify, and his qualification as an expert witness. Consequently, you argue, release of this information at this time will interfere with the pending theft prosecution. Based on these representations and our review, we conclude the release of this information at this time 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, the requestor claims that because the individual being prosecuted for theft is not her client and because she is not requesting the information for reasons related to the pending prosecution, the information is not properly withheld from her on the basis of section 552.108(a)(1). However, the Act does not permit the consideration by a governmental body or this office of a requestor's intended use (or, conversely, non-use) of information when responding to open records requests. *See* Gov't Code § 552.223 (requiring uniform treatment of all requests for information); *see also* Open Records Decision Nos. 508 (1988) at 2 (motives of a person seeking information under the Act are irrelevant), 51 (1974). Additionally, because the city may not treat the current request any differently than a request for the same information from any other member of the public, including a person who would use the information at issue to undermine officer's testimony, the requestor's lack of involvement in the case is of no relevance to whether release of this information would interfere with that case. *See* Gov't Code § 552.007 (prohibiting selective disclosure). Accordingly, the city may withhold the submitted information under section 552.108(a)(1)

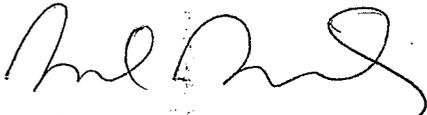
²We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 402854

Enc. Submitted documents

c: Requestor
(w/o enclosures)