



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2010

Ms. Sheri Bryce Dye
Assistant District Attorney
Bexar County
300 Dolorosa, 5th Floor
San Antonio, Texas 78205

OR2010-19325

Dear Ms. Dye:

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# 402967.

The Bexar County Sheriff's Office (the "sheriff") received a request for several categories of information pertaining to a specified case and a named deputy. You claim the requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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

¹Although you also raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception for information the sheriff holds in its capacity as an employer.

²We 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.

investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to “charges arising out of [the specified case] for which criminal charges were pending against [the defendant] at the time the request was made.” We note section 552.108(a)(2) is applicable only if the information at issue is related to a *concluded* criminal case “that did not result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2). Because your assertion of section 552.108(a)(2) is inconsistent with your representation that the information at issue pertains to a pending case, we find that you have failed to demonstrate the information at issue relates to a closed criminal case that did not result in conviction or deferred adjudication. Therefore, we conclude the sheriff may not withhold the submitted information section 552.108(a)(2) of the Government Code.

You also claim some of the information at issue is excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with ongoing law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department’s use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). To claim section 552.108(b)(1), a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 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 with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You generally claim release of the standards for acceptable conduct, daily log sheet, training assignments, policies and general orders, records from dispatchers, witness interviews, and phone numbers may harm law enforcement efforts if released; however, the sample of information you have submitted does not contain these types of information. Further, upon review, we find the sheriff has failed to demonstrate that release of the submitted information

would interfere with law enforcement and crime prevention. We therefore conclude that none of the information at issue may be withheld under section 552.108(b)(1).

Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the sheriff must withhold the information we have marked in the submitted information under section 552.117(a)(2) of the Government Code.

We note the submitted information includes information that is excepted from disclosure under sections 552.102(a) and 552.130 of the Government Code.³ Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state.⁴ See Gov't Code § 552.130(a)(1)-(2). The sheriff must withhold the information we have marked under section 552.130 of the Government Code.⁵

In summary, the sheriff must withhold the information we have marked under sections 552.102(a), 552.117(a)(2), and 552.130 of the Government Code. The remaining information must be released.

³The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

⁴The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 402967

Enc. Submitted documents

cc: Requestor
(w/o enclosures)