



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2011

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

OR2011-00143

Dear Mr. Batoon:

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# 404937.

The City of El Paso and the El Paso Police Department (collectively the "city") received two separate requests for (1) information relating to a specified incident and the personnel file of a named police officer and (2) a photograph of the named police officer. You state the police officer's personnel file has been released with certain redactions.¹ You claim the submitted information is excepted from disclosure under sections 552.108 and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 . . .

¹We 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 without the necessity of requesting an attorney general decision. Additionally, a governmental body may withhold a peace officer's home address and telephone number, personal cell phone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001).

release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, 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* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted incident report relates to an ongoing criminal investigation and release of the report would interfere with the detection, investigation, and prosecution of an alleged crime. Based on this representation, we agree section 552.108(a)(1) applies to the submitted report. *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, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186–88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the city may withhold the submitted report under section 552.108(a)(1) of the Government Code.

We note that the basic information in this instance contains information that may be subject to section 552.1175 of the Government Code, which provides in part:

Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

Gov’t Code § 552.1175(b). Upon review, we find some of the basic information, which we have marked, pertains to a peace officer employed by the city and is held by the city’s police department in its investigative capacity as a law enforcement entity. Thus, to the extent the information we have marked relates to a currently licensed peace officer who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold this information under section 552.1175 of the Government Code. Conversely, if the peace officer at issue is not currently licensed, or does not elect to restrict access to the information

in accordance with section 552.1175(b), the information we have marked may not be withheld pursuant to section 552.1175.

Section 552.119 of the Government Code provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer. Upon review, we find you have failed to demonstrate that release of the photograph would endanger the officer's life or physical safety. Accordingly, the photograph at issue may not be withheld under section 552.119 of the Government Code.

In summary, with the exception of basic information, the city may withhold the submitted incident report under section 552.108(a)(1). To the extent the basic information we have marked in the incident report relates to a currently licensed peace officer who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. 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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is fluid and cursive, with a prominent initial "N" and a long, sweeping underline.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 404937

Enc. Submitted documents

c: Requestors
(w/o enclosures)