



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2011

~~Ms. P. Armstrong~~
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-00399

Dear Ms. Armstrong:

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# 405304 (Open Records Request 2010-9654).

The Dallas Police Department (the "department") received a request for a copy of the requestor's client's resume and information pertaining to Internal Affairs Division control number 10-296. You claim portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the department has previously released to the public eight of the submitted video recordings, which we have indicated. The Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from the public, unless public disclosure of the

¹We 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.

information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). Although you claim section 552.108 of the Government Code as an exception to disclosure of the indicated video recordings, we note this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 could be waived). As such, section 552.108 does not expressly prohibit the release of information to the public or make information confidential under law for purposes of section 552.007. Therefore, the department may not withhold the indicated video recordings under section 552.108. However, we note two of these video recordings contain information subject to section 552.130 of the Government Code.² Because section 552.130 is a confidentiality provision, we will address the applicability of section 552.130 to these two video recordings. The remaining six video recordings we have indicated must be released pursuant to section 552.007 of the Government Code.

We will now address your argument under section 552.108 of the Government Code for the remaining information you have marked, which consists of information you have marked in the submitted documents and the video recordings not subject to section 552.007. 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[.]" Gov't Code § 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). The information you seek to withhold under section 552.108 relates to an internal affairs investigation conducted by the department. 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). However, you explain that the remaining information you have marked under section 552.108 relates to pending criminal prosecutions. You inform us both the department

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

and the Dallas County District Attorney's Office object to release of the information at issue because such release would interfere with the pending criminal prosecutions. Based on these representations, we conclude the release of this information 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Accordingly, with the exception of the eight video recordings subject to section 552.007, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

~~We note the remaining information includes information that is excepted from disclosure under section 552.102(a) 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." Gov't Code § 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 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. The remaining information includes an accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsections (c) or (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the present request, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident report form you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

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.

You assert some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code 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. If the individuals at issue are currently licensed peace officers as defined by article 2.12, then the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code.⁴ This information may not be withheld under section 552.117(a)(2) if the individuals at issue are not currently licensed peace officers.

If the individuals are not currently licensed peace officers, section 552.117(a)(1) of the Government Code may apply to the information at issue. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The department may only withhold the information at issue under section 552.117(a)(1) if the individuals elected confidentiality under section 552.024 prior to the date on which the department received the request for this information. If the individuals made timely elections under section 552.024, then the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(1). If the individuals did not make timely elections under section 552.024, then this information may not be withheld under section 552.117(a)(1).

We note the remaining documents and the two video recordings we have indicated contain information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle record information we have marked in

⁴We 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.

the remaining information and the discernable Texas license plate numbers on the two indicated video recordings pursuant to section 552.130 of the Government Code.⁵

Section 552.136 of the Government Code provides in part that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We note that the remaining information includes employee identification numbers. We understand that these same numbers are used for an employee’s City of Dallas credit union account. Accordingly, the department must withhold the employee identification numbers you have marked, as well as the additional employee identification number we have marked, under section 552.136 if these numbers are related to existing credit union accounts.

In summary, with the exception of the eight video recordings subject to section 552.007 of the Government Code, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.102(a) of the Government Code. The department must withhold the marked accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. If the individuals at issue are currently licensed peace officers as defined by article 2.12, then the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code. If these individuals are not currently licensed peace officers but made timely elections under section 552.024 of the Government Code, then the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(1) of the Government Code. The department must withhold the information we have marked in the remaining information and the discernable Texas license plate numbers on the two indicated video recordings pursuant to section 552.130 of the Government Code. The department must withhold the employee identification numbers you have marked, as well as the additional employee identification number we have marked, under section 552.136 of the Government Code if these numbers are related to existing credit union accounts. The remaining information must be released.⁶

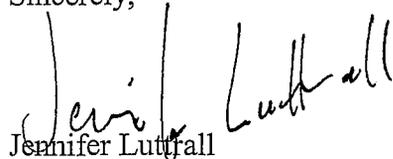
⁵We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number, Texas license plate number, and a portion of a video recording depicting a discernable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

⁶Because the requestor has a right of access to certain information pertaining to his client that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different 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,



Jennifer Luttfall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 405304

Enc. Submitted documents

c: Requestor
(w/o enclosures)