



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2011

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2011-00550

Dear Ms. Middlebrooks

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# 405616 (Dallas ORR# 2010-9757).

The Dallas Police Department (the "department") received a request for a copy of Internal Affairs investigation number 10-296, including related documents and recordings, the personnel file, and internal affairs resume of a named officer, and information relating to the disciplinary action against the officer in this matter. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.117, 552.1175, 552.127, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you inform us some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2010-17355 (2010) and 2011-00399 (2011). We have no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, to the

¹We 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 those records contain substantially different types of information than that submitted to this office.

extent the information at issue in the current request is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter Nos. 2010-17355 and 2011-00399 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous rulings, we will consider the exceptions you raise.

Initially, we note the submitted information contains a CR-3 accident report form 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 subsection (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. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation 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.² *Id.* The requestor has not provided the department with two of the three pieces of information; thus, we conclude the department must withhold the submitted accident report you have marked under section 550.065(b).

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See, id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The information you seek to withhold pertains to an internal affairs investigation. 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 state the information you have marked relates to a pending criminal investigation or prosecution of official oppression. You inform us the Dallas County District Attorney’s Office objects to the release of the information at issue, as it would interfere with the pending investigation or prosecution. Based on your representation and our review, we

²Transp. Code § 550.0601 (“department” means Texas Department of Transportation).

conclude section 552.108(a)(1) is applicable in this instance. *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). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1).³

You assert portions of the remaining information are excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(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. *Id.* § 552.117(a)(2). We note section 552.117 of the Government Code protects personal privacy. The requestor, however, as the attorney of the named officer, has a right of access to his client's private information under section 552.023 of the Government Code. Therefore, the department may not withhold from this requestor any of the information you have marked under section 552.117. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987).

In summary, to the extent any portion of the submitted information was ruled upon in Open Records Letter Nos. 2010-17355 (2010) and 2011-00399 (2011), the department may continue to rely on Open Records Letter Nos. 2010-17355 and 2011-00399 as previous determinations and withhold or release the identical information in accordance with those rulings. To the extent the submitted information is not encompassed by the previous rulings, the department must withhold the submitted accident report you have marked under section 550.065(b) of the Transportation Code. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must release the remaining information.⁴

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.

³As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

⁴We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 405616

Enc. Submitted documents

c: Requestor
(w/o enclosures)