



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2011

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

OR2011-00639

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# 405751 (Dallas ORR# 2010-9753).

The Dallas Police Department (the "department") received a request for a copy of Internal Affairs investigation number 10-296, including investigator notes and logs, disciplinary recommendations, case summaries provided to the police chief, and any audio or video recordings, and the resume of a named officer. You claim portions of the requested information are excepted from disclosure under sections 552.108, 552.117, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-00399 (2011). In that ruling, we determined the department may withhold portions of the information at issue under section 552.108(a)(1) of the Government Code; the

¹Although you raise section 552.101 of the Government Code in conjunction with sections 552.117 and 552.136 of the Government Code, we note section 552.101 does not encompass other exceptions in the Act.

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

department must withhold portions of the information at issue under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, as well as under sections 552.102(a), 552.117, 552.130, and 552.136 of the Government Code; and the department must release the remaining information at issue. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on our prior ruling as a previous determination and withhold or release the identical information in accordance with that ruling. *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 requested information is not encompassed by the previous ruling, we will address the submitted arguments.

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 consists of 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 department 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 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) of the Government Code.³

We note a portion of the remaining information may be subject to section 552.117 of the Government Code.⁴ Section 552.117(a)(2) excepts from public disclosure the home

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

⁴The 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).

addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.⁵ Gov't Code § 552.117(a)(2). Section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Therefore, the department must withhold the cellular telephone number of a peace officer we have marked under section 552.117(a)(2), but only if the officer pays for the cellular telephone service with personal funds.

You have marked a portion of the remaining information under section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Therefore, we agree the department must withhold the information you have marked under section 552.130 of the Government Code.⁶

In summary, to the extent any portion of the requested information was ruled upon in Open Records Letter No. 2011-00399, the department may continue to rely on Open Records Letter No. 2011-00399 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the requested information is not encompassed by the previous ruling, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code; the department must withhold the cellular telephone number of a peace officer we have marked under section 552.117(a)(2) of the Government Code, if the officer pays for the cellular telephone service with personal funds; and the department must withhold the information you have marked under section 552.130 of the Government Code. The department must release the remaining information.⁷

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.

⁵"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

⁶We 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 and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁷We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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# 405751

Enc. Submitted documents

c: Requestor
(w/o enclosures)