



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2011

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-07185

Dear Ms. McClellan:

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# 419360 (ORR# 2011-2252).

The Dallas Police Department (the "department") received a request for the public integrity and internal affairs records of a named officer. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.102, 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

Section 552.108(a) 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: (1) 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 id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

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.

However, section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. 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 City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 326 (Tex. App.—Austin 2002, no pet.) (“we cannot say that background and reference information obtained from third parties in the ordinary course of conducting a background investigation is related to law enforcement”). You state the information you have marked under section 552.108 relates to a pending criminal investigation. Based on this representation, we conclude the release of the information you at issue 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. 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*. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the information you have marked under section 552.108(a)(1).²

You assert some of the remaining information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). Some of the remaining information you have marked under section 552.117 does not pertain to a department employee.³ Therefore, the department may not withhold this information, which we have marked for release, under section 552.117. However, the department must withhold the remaining information you have marked, as well as the information we have marked, under section 552.117(a)(2).

You assert that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136 provides 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.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). You inform us an employee's identification number is used in conjunction with one additional digit in order to access the

²As we are able to resolve this matter under section 552.108, we do not address your other arguments to withhold this information.

³We note this information also does not pertain to a peace officer. *See* Gov't Code § 552.1175.

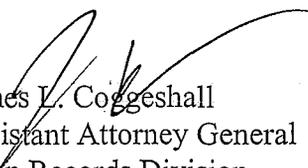
employee's credit union account. Thus, we agree the department must withhold the identification numbers you have marked in the remaining information under section 552.136 of the Government Code.

To conclude, with the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. With the exception of the information we have marked for release, the department must withhold the information marked in the remaining documents under sections 552.117(a)(2) and 552.136 of the Government Code. The department must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 419360

Enc. Submitted documents

c: Requestor
(w/o enclosures)