



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2011

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

OR2011-08966

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# 421712 (ORR# 2011-2998).

The Dallas Police Department (the "department") received a request for the personnel file, internal affairs resume, and any disciplinary action pertaining to a named officer and a specified internal affairs investigation. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note 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. 2011-06720 (2011). In that ruling, we concluded, except for basic front page offense and arrest information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-06720 was based have changed. Accordingly, with regard to the requested information that is identical to the information

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 those submitted to this office.

previously requested and ruled upon by this office in the prior ruling, we conclude the department may continue to rely on Open Records Letter No. 2011-06720 as a previous determination and withhold or release the previously ruled upon 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).

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). In this instance, the submitted information consists of records of an internal affairs investigation. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *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). You represent to this office that the information at issue relates to an incident that is the subject of a pending criminal case. You state release of the submitted information would interfere with the investigation or prosecution of crime. Based on your representations, we conclude the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. 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).

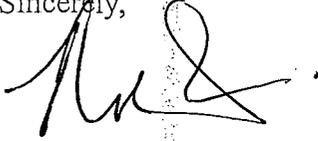
In summary, the department may continue to rely on Open Records Letter No. 2011-06720 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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 'Nneka Kanu', written over a vertical line of dots.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 421712

Enc. Submitted documents

cc: Requestor
(w/o enclosures)