



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2011

Ms. Caroline Kelley  
City Attorney  
Missouri City  
1522 Texas Parkway  
Missouri City, Texas 77489

OR2011-10346

Dear Ms. Kelley:

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# 424471.

The Missouri City Police Department (the "department") received a request for eighteen categories of information related to a named officer and narcotics dog.<sup>1</sup> You claim that most of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.130, 552.147 and 552.151 of the Government Code.<sup>2</sup> You also state that release of Exhibit D may implicate the proprietary interests of Worldwide Canine, Inc. ("Worldwide Canine"). Accordingly, you have notified Worldwide Canine of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records

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<sup>1</sup>We note the department has made a good faith effort to relate the request for information pertaining to the named narcotics dog to the information it holds.

<sup>2</sup>Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and "special circumstances," we understand you to raise section 552.151 of the Government Code based on the substance of your arguments

Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

You assert some of the requested information is excepted from release under section 552.108 of the Government Code. 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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information in Exhibits F, G, H, I, J, K, M and part of Exhibit B relates to pending criminal investigations. Based on your representations and our review, we find that release of Exhibits F, G, H, I, J, K, M and report number 1-10-026096 in Exhibit B would interfere with the investigation and prosecution of crime. Therefore, section 552.108(a)(1) is applicable to Exhibits F, G, H, I, J, K, M and report number 1-10-026096 in Exhibit B. *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 basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*, and includes the identities of investigating officers. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the department may withhold Exhibits F, G, H, I, J, K, M and report number 1-10-026096 in Exhibit B under section 552.108(a)(1).<sup>3</sup>

You claim, however, portions of the basic information are confidential under section 552.151 of the Government Code, which provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Gov't Code § 552.151. Portions of the basic information in Exhibits F, G, H, I, J, K, M and report number 1-10-026096 in Exhibit B, as well as portions of the remaining information in Exhibit B, relate to undercover police officers with the department. You represent that release of this information would subject these undercover officers to an "imminent threat of physical danger." Based on your representation, we conclude you have demonstrated that release of the identifying information of these undercover police officers would subject these officers to substantial threats of physical harm. Therefore, the department must withhold this information under section 552.151 of the Government Code.

You generally raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege for the basic information in Exhibits F and K. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. Open Records Decision No. 515 at 3 (1988). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You generally claim the informer's privilege for the basic information in Exhibits F and K. However, as noted above, the informer's privilege does not protect an individual who merely provides information in the course of an investigation. You do not explain how the basic information in Exhibits F and K identifies an informer for purposes of the common-law informer's privilege. Thus, we find the department has failed to demonstrate the applicability of the common-law informer's privilege to the basic information in Exhibits F and K. Therefore, the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with the informer's privilege.

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.”<sup>4</sup> 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.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information in Exhibit C that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.<sup>5</sup> However, we find no portion of the remaining information constitutes the home address, home telephone number, emergency contact information, social security number, or family member information of a peace officer employed by the department. Accordingly, the department may not withhold any of the remaining information under section 552.117(a)(2) of the Government Code.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). The remaining information contains personal information of a peace officer who is employed with a law enforcement agency other than the department. If the peace officer whose information is at issue elects to restrict access to the marked personal information in accordance with section 552.1175(b), the information must be withheld from disclosure. If the peace officer does not properly elect in accordance with section 552.1175(b), the marked information must be released.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Upon review, we agree the department must withhold the driver's license numbers and expiration dates, vehicle identification numbers, and license plate numbers you have marked in the remaining information under section 552.130 of the Government Code.<sup>6</sup>

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code

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<sup>6</sup>We 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 Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

§ 552.147. Accordingly, the department may withhold the social security numbers you have marked under section 552.147.<sup>7</sup>

Finally, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from Worldwide Canine. Thus, Worldwide Canine has not demonstrated that it has a protected proprietary interest in any of the information in Exhibit D. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold Exhibit D on the basis of any proprietary interests Worldwide Canine may have in the information.

In summary, with the exception of basic information, the department may withhold Exhibits F, G, H, I, J, K, M and report number 1-10-026096 in Exhibit B under section 552.108(a)(1) of the Government Code. The department must withhold the identifying information of undercover narcotics officers from the basic information in Exhibits F, G, H, I, J, K, M, and report number 1-10-026096 in Exhibit B, as well as portions of the remaining information in Exhibit B, under section 552.151 of the Government Code. The department must withhold the information we have marked in Exhibit C under section 552.102 of the Government Code. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.1175 of the Government Code if the peace officer to whom this information belongs elects to restrict access to his personal information in accordance with section 552.1175(b) of the Government Code. The department must withhold the remaining motor vehicle record information you have marked under section 552.130 of the Government Code. The department may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released.

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

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<sup>7</sup>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.

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 424471

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Rob Hawkins  
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Spring Branch, Texas 78070  
(Third party w/o enclosures)