



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2011

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2011-11666

Dear Ms. Shortall:

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# 426789 (ID Nos. 4159, 4166, 4165, 4178, 4179, 4180, 4194, 4268, 4271, 4286).

The City of Arlington (the "city") received ten requests from seven different requestors for information pertaining to a specified incident, a named police officer, and a specified address. You claim 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 information.

Initially, we note the submitted information contains a court-filed divorce decree. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17); *see also Star Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Although you raise section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" that makes court records confidential for the purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the court-filed divorce decree may not be withheld under section 552.108 of the Government

Code. We note, however, that a portion of the divorce decree may be subject to section 552.117 of the Government Code.¹ As this section constitutes other law for purposes of section 552.022, we will address the applicability of this section.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, family member information, and emergency contact information, regardless of whether the peace officer made an election under section 552.024 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. Therefore, the city must generally withhold the personal information of the named officer under section 552.117(a)(2). However, the submitted information reflects that the named officer may no longer be a licensed peace officer. Thus, if the named officer is currently a licensed peace officer, the city must withhold his personal information, which we have marked in the submitted divorce decree, under section 552.117(a)(2); however if he is no longer a licensed peace officer, his personal information may not be withheld under section 552.117(a)(2).

If the named officer is no longer a licensed peace officer, his personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone numbers, social security number, family member information, and emergency contact information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 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)). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold the named officer's personal information under section 552.117(a)(1) if he elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the named officer is no longer a licensed peace officer and made a timely election under section 552.024, the city must withhold his personal information, which we have marked in the submitted divorce decree, under section 552.117(a)(1). If the named officer is no longer a licensed peace officer and did not make a timely election under section 552.024, his personal information may not be withheld under section 552.117(a)(1). Regardless, the remaining information in the divorce decree must be released pursuant to section 552.022(a)(17) of the Government Code.

We will now address your claim under section 552.108 of the Government Code for the submitted information not subject to section 552.022 of the Government Code.

¹The 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).

Section 552.108(a)(1) 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). 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 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). You state the submitted information pertains to a pending criminal investigation being conducted by the city’s police department. Based on this representation and our review, we determine release of the submitted information not subject to section 552.022 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is generally applicable to the submitted information not subject to section 552.022.

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*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the submitted information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.

In summary, if the named officer is currently a licensed peace officer, the city must withhold his personal information, which we have marked in the submitted divorce decree, under section 552.117(a)(2) of the Government Code; however if he is no longer a licensed peace officer, his personal information may not be withheld under section 552.117(a)(2). If the named officer is no longer a licensed peace officer and made a timely election under section 552.024 of the Government Code, the city must withhold his personal information, which we have marked in the submitted divorce decree, under section 552.117(a)(1) of the Government Code; however, if he is no longer a licensed peace officer and did not make a timely election under section 552.024, his personal information may not be withheld under section 552.117(a)(1). Regardless, the remaining information in the divorce decree must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold the submitted information not subject to section 552.022 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tf

Ref: ID# 426789

Enc. Submitted documents

c: Requestor
(w/o enclosures)