



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2011

Mr. Jason L. Mathis
For Town of Addison
Cowles & Thompson
901 Main Street, Suite 3900
Dallas, Texas 75202

OR2011-11799

Dear Mr. Mathis:

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# 427302.

The Town of Addison (the "town"), which you represent, received a request for information related to a named town police officer, including complaints, the officer's employment file, the officer's employment history, payroll records during a specified time period, and dispatch information related to the officer during a specified time period. You state that some of the requested information does not exist.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, and 552.117 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the town did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business-day after

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²Although you also initially raise sections 552.103 and 552.130 of the Government Code as exceptions to disclosure, you have provided no arguments regarding the applicability of these sections. Accordingly, we find the town has waived its claims under these exceptions. *See Gov't Code § 552.301(e)* (governmental body must provide comments explaining why exceptions raised should apply to information requested).

the date of receiving the written request.” Gov’t Code § 552.301(b). While the town raised most of its claimed exceptions within the ten-business-day time period as required by subsection 552.301(b), the town did not raise section 552.111 until after the ten-business-day deadline had passed. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.111 is a discretionary exception to disclosure which protects a governmental body’s interests and may be waived. *See* Open Records Decision No. 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). In failing to timely raise section 552.111, we find the town waived its claim under this exception, and none of the submitted information may be withheld on that basis. We will, however, consider the applicability of your timely-raised exceptions.

You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. In this instance, you do not present any arguments against disclosure under that section nor have you directed our attention to any law under which any of the submitted information is considered to be confidential for the purposes of section 552.101. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). In addition, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2000), 575 at 2 (1990). Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code.

Section 552.108 provides, in pertinent part, as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov’t Code § 552.108(b)(1). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(b)(1), .301(e)(1)(A).

Section 552.108(b)(1) of the Government Code encompasses internal law enforcement and prosecution records, the release of which would interfere with ongoing law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations

of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). To claim section 552.108(b)(1), a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). Upon review of your arguments and the information at issue, we find the town has failed to demonstrate that release of any of the submitted information would interfere with law enforcement and crime prevention. Therefore, the town may not withhold any of the submitted information under section 552.108(b)(1).

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 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 reviewed the submitted information, we have marked information that must be withheld under section 552.102(a) of the Government Code. However, none of the remaining information is excepted under section 552.102(a), and none of it may be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, and social security numbers, as well as information that reveals whether the peace officer has family members, regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. 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)). "Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure. Upon review, we find the town must withhold the social security number we have marked under section 552.117(a)(2) of the Government Code.

In summary, the town must withhold the information we have marked under section 552.102(a) of the Government Code. The town must also withhold the social security number we have marked under section 552.117(a)(2) 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 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 427302

Enc. Submitted documents

c: Requestor
(w/o enclosures)