



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2011

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

OR2011-13457

Dear Ms. Middlebrooks:

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# 430289 (DPD PIR# 2011-5730).

The Dallas Police Department (the "department") received a request for all internal affairs investigations of a named officer from 2010 and 2011. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

statutes, such as section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of Dallas to be part of an emergency communication district that was established under section 772.318.

You have marked the telephone number of a 9-1-1 caller that the department seeks to withhold. We conclude the department must withhold the marked telephone number under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, to the extent it consists of an originating telephone number that was furnished by a 9-1-1 service supplier. If the marked telephone number is not an originating telephone number provided by a 9-1-1 service supplier, the marked information may not be withheld under section 552.101 in conjunction with section 772.318.

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 an internal affairs file pertaining to a specified incident. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that 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). However, you represent to this office that the information you have marked relates to an incident that is the subject of a pending criminal prosecution for theft, and that release of the information you have marked would interfere with the prosecution of crime. Based on these representations, we determine release of the information you have marked 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). Thus, the information you have marked may be withheld under section 552.108(a)(1) of the Government Code.²

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.³ 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)). You have marked in the remaining investigation records the information you claim is excepted under section 552.117. We note the information at issue pertains to a former department officer. It is unclear, however, whether the former department officer is currently a licensed peace officer as defined by article 2.12. Thus, if the former department officer is a currently licensed peace officer as defined by article 2.12, the department must withhold the information you have marked under section 552.117(a)(2) of the Government Code. If, however, the former department officer is not a currently licensed peace officer, his personal information may not be withheld under section 552.117(a)(2) of the Government Code.

However, if the former department officer is no longer a licensed peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member 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 item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, if the former department officer is no longer a licensed peace officer as defined by article 2.12, then to the extent he timely elected confidentiality under section 552.024, the department must withhold the information you have marked under section 552.117(a)(1) of the Government Code. If, however, the former department officer is no longer a licensed peace officer and did not timely elect to keep his personal information confidential, his personal information must be released.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(2)). Accordingly, the department must withhold the information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

You claim portions of the remaining information are excepted under section 552.136 of the Government Code, which provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, 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. You seek to withhold the employee identification number you have marked in the remaining information. You inform us an employee's identification number is used in conjunction with one additional digit in order to access the employee's credit union account. Thus, the department must withhold the bank account and employee identification number you have marked, in addition to the employee identification numbers we have marked, in the remaining information under section 552.136 of the Government Code.

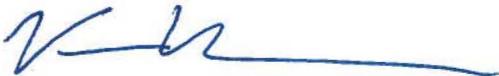
In summary, the department must withhold the marked telephone number under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, to the extent it consists of an originating telephone number that was furnished by a 9-1-1 service supplier. If the marked telephone number is not an originating telephone number provided by a 9-1-1 service supplier, the marked information may not be withheld under section 552.101 in conjunction with section 772.318. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. If the former department officer is a currently licensed peace officer, the department must withhold the information you have marked under section 552.117(a)(2) of the Government Code. If the former department officer is no longer a licensed peace officer, then to the extent he timely elected confidentiality under section 552.024 of the Government

Code, the department must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The department must withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code. The department must withhold the bank account and employee identification number you have marked, in addition to the employee identification numbers we have marked, under section 552.136 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,

A handwritten signature in blue ink, appearing to read 'VB', followed by a long horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 430289

Enc. Submitted documents

c: Requestor
(w/o enclosures)