



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2011

Mr. James K. Crain, III
Crain & Sheppard
P.O. Box 427
Cuero, Texas 77954

OR2011-15083

Dear Mr. Crain:

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# 433127.

The City of Cuero (the "city"), which you represent, received a request for documents relating to the resignation or termination of a former city police officer. You claim the requested information is excepted from disclosure under sections 552.102, 552.108, 552.117, and 552.1175 of the Government Code.¹ We have also received comments from the Public Information Coordinator of the Office of the Attorney General (the "OAG") objecting to the release of the requested information. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested

¹Although you also raise section 552.119 of the Government Code, you do not provide arguments explaining the applicability of this section to the information at issue. Therefore, we assume the city is no longer asserting section 552.119. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain applicability of raised exception).

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). The city asserts the submitted information is excepted from disclosure under section 552.108(a)(1) because it is part of an ongoing criminal investigation being conducted by the OAG. However, the OAG informs us the submitted information pertains to a criminal prosecution that resulted in a conviction. The OAG asserts, nevertheless, the submitted information relates to a pending criminal prosecution being handled by the OAG because the defendant “has not yet lost his right to appeal [his] sentence, and the OAG anticipates that he will exercise that right.” However, we find the mere chance of an appeal is insufficient to demonstrate the release of the submitted information will interfere with law enforcement efforts. Thus, we conclude neither the city nor the OAG has established release of the submitted information would interfere with law enforcement. Accordingly, the city may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code.

You also claim the submitted information is excepted from disclosure under section 552.102 of the Government Code. 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.” 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 that must be withheld under section 552.102(a) of the Government Code. The remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

You also assert some of the submitted information may be excepted under section 552.117 of the Government Code, which provides, in relevant part, the following:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable[.]

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)). The submitted documents contain information about a former city police department officer and another city employee. If the former city police department officer is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, then the city must withhold the information we have marked under section 552.117(a)(2). If, however, the former city police officer is not a currently licensed peace officer, then the city may not withhold this information under section 552.117(a)(2). Nevertheless, this information may be subject to section 552.117(a)(1). 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). Therefore, the city must withhold the information we have marked under section 552.117(a)(1) if this information pertains to current or former city employees who requested confidentiality under section 552.024 prior to the date on which the request for this information was made. However, the city may not withhold this information under section 552.117(a)(1) if the employees at issue did not make a timely election under section 552.024.²

You assert some of the remaining information at issue may be excepted under section 552.1175 of the Government Code. Section 552.1175(b) provides, in part, the following:

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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:

- (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, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Upon review, we find you have not established any of the remaining information is excepted from disclosure under section 552.1175.

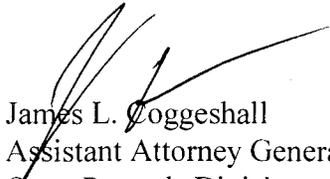
²To the extent the marked social security number is not excepted from disclosure under section 552.117, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

To conclude, the city must withhold the information we have marked under section 552.102 of the Government Code. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the former city police officer at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. The city must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employees at issue requested confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was made. The city must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 433127

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)