



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2012

Ms. S. McClellan  
Assistant City Attorney  
City of Dallas  
1400 S. Lamar  
Dallas, Texas 75215

OR2012-02851

Dear Ms. McClellan:

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# 446449 (DPD Request Number 2011-11164).

The Dallas Police Department (the "department") received a request for all records pertaining to a specified control number. 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 representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information, which we have marked, is not responsive because it was created after the date the department received the instant request. The department need not release this non-responsive information in response to this request, and this ruling will not address that information.

We note the responsive information contains a CR-3 accident report form. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information

---

<sup>1</sup>We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

made confidential by statute.<sup>2</sup> Gov't Code § 552.101. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* §550.065(c)(4). The requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the CR-3 accident report form we have marked under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

You raise section 552.108(a)(1) of the Government Code for the remaining responsive information. 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 information relating to an administrative investigation. *See 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). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information).

You state the remaining responsive information “pertains to a pending case or cases.” However, the remaining responsive information consists of the department’s administrative investigation of alleged criminal conduct that occurred in Euless, Texas and was investigated by the Euless Police Department. You have not explained how the department’s administrative investigation pertains to any criminal matter pending with the department or the Dallas County District Attorney’s Office. Furthermore, you have not provided a representation from the Euless Police Department or any other law enforcement entity asking the department, as proper custodian of information relating to alleged criminal conduct, to withhold the information because its release would interfere with a pending investigation or prosecution. Therefore, the department may not withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

---

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note, however, that some of the remaining responsive information is subject to sections 552.102, 552.117, 552.1175, and 552.130 of the Government Code. 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 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.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we find the department must withhold the information we have marked under section 552.102(a) of the Government Code.

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. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, the department must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code, unless the individual whose information we have marked is no longer a licensed peace officer.

If the individual is no longer a licensed peace officer, his personal information may be excepted from disclosure under 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. *Id.* § 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)*. The department may only withhold personal information under section 552.117(a)(1) if the individual elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual is no longer a licensed peace officer and made a timely election under section 552.024, the department must withhold the personal information we have marked under section 552.117(a)(1). If the individual 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).<sup>3</sup>

Section 552.1175 of the Government Code provides, in part, the following:

---

<sup>3</sup>Regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See Gov’t Code § 552.147(b)*.

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.

Gov't Code § 552.1175(b). The remaining responsive information contains information pertaining to a peace officer not employed by the department. Upon review, we find the department must withhold the information we have marked under section 552.1175 if the individual to whom this information concerns elects to restrict access to his information in accordance with section 552.1175(b).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1)-(2). Upon review, we find the department must withhold the marked driver's license and motor vehicle information under section 552.130.

Section 552.136(b) of the Government Code provides "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b). We understand an employee's identification number is also used as an employee's city bank account number. Thus, the department must withhold the information we have marked under section 552.136.

In summary, the department must withhold the CR-3 accident report form we have marked under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code. The department must withhold the marked dates of birth under section 552.102(a) of the Government Code. If the individual who is the subject of the internal affairs investigation is currently a licensed peace officer, the department must withhold his marked personal information under section 552.117(a)(2) of the Government Code. If the individual is no longer a licensed peace officer but made a timely election under section 552.024 of the Government Code, the department must withhold his personal information under section 552.117(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.1175 of the Government Code if the individual to whom this information concerns elects to restrict access to his information in accordance with section 552.1175(b). The department must withhold the

marked driver's license and motor vehicle information under section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.136 of the Government Code. The remaining responsive 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](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/eb

Ref: ID# 446449

Enc. Submitted documents

c: Requestor  
(w/o enclosures)