



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2012

Ms. S. McClellan  
Assistant City Attorney  
Criminal Law and Police Section  
1400 South Lamar  
Dallas, Texas 75215

OR2012-02854

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# 446453 (DPD Request No. 2011-11165).

The City of Dallas (the “city”) received a request for information regarding a specified control number and a named individual. 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>

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). 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)

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

(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 submitted information “pertains to a pending case or cases.” However, this information consists of the city police department’s (the “department”) administrative investigation of alleged criminal conduct that occurred in Hillsboro, Texas, and was investigated by the Hillsboro 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 Hillsboro 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 city may not withhold the submitted information under section 552.108(a)(1) of the Government Code.

We note, however, that some of the submitted information is subject to sections 552.102 and 552.117 of the Government Code.<sup>2</sup> 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). Upon review, we conclude the city must withhold the named individual’s birth date, which 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 city must withhold the named individual’s personal information, which we have marked, under section 552.117(a)(2) of the Government Code, unless he is no longer a licensed peace officer.

If the named 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.

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<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).

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 city may only withhold personal information under section 552.117(a)(1) if the named individual elected confidentiality under section 552.024 prior to the date on which the request for information was received. Accordingly, if this individual is no longer a licensed peace officer and made a timely election under section 552.024, the city must withhold the personal information we have marked under section 552.117(a)(1) of the Government Code. If the named 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).

In summary, the city must withhold the marked birth date under section 552.102(a) of the Government Code. If the named individual is currently a licensed peace officer, the city must withhold his marked personal information under section 552.117(a)(2) of the Government Code. If this individual is no longer a licensed peace officer but made a timely election under section 552.024 of the Government Code, the city must withhold his personal information under section 552.117(a)(1) of the Government Code. 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](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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eb

Ref: ID# 446453

Enc. Submitted documents

c: Requestor  
(w/o enclosures)