ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 29, 2012

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

OR2012-03099

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# 446766 (DPD Req. No. 2011-11313).

The Dallas Police Department (the "department") received a request for all e-mail and text messages sent to or from a named department employee. We understand you have marked personal e-mail addresses that you will withhold under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).[1] You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[2]

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[1]We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

[2]We 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.

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: (1) 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.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked relates to pending criminal cases. Based on your representations and our review, we conclude that release of the information at issue 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 curium*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n 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 [if] release of the internal record or notation would interfere with law enforcement or prosecution[.]" This section is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *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). In Open Records Decision No. 506 (1988), this office determined the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." Open Records Decision No. 506 at 2 (1988). We noted the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and public access to these numbers could interfere with that purpose. *Id.* To claim this aspect of section 552.108 protection, however, 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).

You inform us the cellular telephone numbers you have marked in the submitted information are used by department officers in the field to carry out their law enforcement duties. You assert the release of these cellular telephone numbers would interfere with law enforcement by preventing the officers from taking care of their immediate needs in the field. Additionally, you state the remaining information you have marked under section 552.108(b)(1) consists of "Intelligence bulletins related to terrorism that are restricted to law enforcement only." You state release of this information would reveal "methods and techniques and strategies being used to identify terrorism suspects." Based on your representations and our review of the information at issue, we conclude the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code.[3]

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Upon review, we agree the information you have marked constitutes the personal information of a peace officer. Accordingly, the department must withhold this information under section 552.117(a)(2) of the Government Code.

The remaining information includes e-mail addresses subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release.

In summary, the department may withhold the information you have marked under section 552.108 of the Government Code. The department must withhold the information you have marked under section 552.117(a)(2) of the Government Code. The department must withhold the personal e-mail addresses we have marked under section 552.137 of the

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[3]As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Government Code, unless the owners of the addresses have affirmatively consented to their release. 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,

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 446766

Enc. Submitted documents

c: Requestor
(w/o enclosures)