



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2012

Mr. B. Chase Griffin
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 700
Richardson, Texas 75081

OR2012-07118

Dear Mr. Griffin:

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# 453538 (ORR No. 10-5085).

The McKinney Police Department (the "department"), which you represent, received a request for a specified internal investigation, including statements, audio and video recordings from interviews, and 911 and dispatch calls. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note some of the submitted information was the subject of a previous request by the department for a ruling, in response to which this office issued Open Records Letter No. 2012-01684 (2012). In the previous ruling, we concluded, to the extent the department maintains law enforcement records other than report numbers 11-006738 and 11-007246 that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We also ruled the department must withhold (1) the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the information we marked in event report number 11-008093 under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the cellular telephone account number we marked under section 552.136 of the Government Code. The remaining responsive information must be released. You now seek to withhold portions of the released information. Section 552.007 of the Government Code provides if a governmental body

voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential by law. Although you raise section 552.108, section 552.108 does not prohibit the release of information or make information confidential. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Accordingly, to the extent any portion of the submitted information was released in accordance with Open Records Letter No. 2012-01684, the department may not now withhold such information under section 552.108. Further, once this office has determined information is not excepted from disclosure, a governmental body generally may not seek another ruling pertaining to precisely the same information. *See* Gov't Code § 552.301(f); ORD 665 at 2 (governmental body not authorized to seek attorney general decision unless it in good faith believes valid legal arguments exists to support claimed exception). As we have no indication the law, facts, and circumstances on which Open Records Letter No. 2012-01684 was based have changed, the department must continue to rely on Open Records Letter No. 2012-01684 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we note a majority of the submitted information was created after the date of the previous request and, thus, is not encompassed by the previous ruling. Therefore, to the extent the previous ruling does not encompass the submitted information, we will consider your arguments against disclosure.

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[.]” Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 internal affairs records. 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 explain the submitted information pertains to an open and pending criminal investigation. Based on your representation and our review, we conclude the release of the submitted information 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we conclude the remaining information may be withheld under section 552.108(a)(1) of the Government Code.

In summary, to the extent the submitted information is identical to the information previously ruled upon by this office, the department must continue to rely on Open Records Letter No. 2012-01684 as a previous determination and withhold or release the previously ruled upon information in accordance with it. The remaining information may be withheld under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments.

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 453538

Enc. Submitted documents

c: Requestor
(w/o enclosures)