



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2012

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

OR2012-07147

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# 453891 (DPD ORR No. 2012-02658).

The Dallas Police Department (the “department”) received a request for all internal affairs records regarding a specified officer generated since January 21, 2012. You indicate you will release some of the submitted information with information redacted pursuant to section 552.130 of the Government Code<sup>1</sup> and Open Records Decision No. 670 (2001).<sup>2</sup> You claim the remaining information is excepted from disclosure under sections 552.102 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov’t Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body’s decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

<sup>2</sup>Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

<sup>3</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.

You indicate the department will redact information from the records to be released under section 552.102 of the Government Code. We note a governmental body may not withhold information from the public without asking this office for a decision under section 552.301 of the Government Code unless a provision of the Act or a previous determination specifically authorizes the governmental body to do so. *See* Gov't Code § 552.301(a); *see also, e.g., id.* §§ 552.024(c), .147; Open Records Decision No. 673 (2001) (previous determinations). We are unaware of any statutory or other authority that would permit the department to withhold information under section 552.102 without asking this office for a decision. Therefore, the department may not redact any information from the records to be released on the basis of section 552.102 without asking this office for a ruling under section 552.301.

Next, we note the submitted documents include a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision"<sup>4</sup> Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including chapter 550 of the Transportation Code. 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 submitted CR-3 accident report form, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.<sup>5</sup>

Section 552.102 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 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.*, 354 S.W.3d 336 (Tex. 2010). Upon review of the information at issue, we find the department must withhold the information you have marked under section 552.102 of the Government Code.

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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[.]” Gov’t Code 552.108(a)(1). Generally, 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). You state the information you have marked relates to a pending criminal investigation and prosecution. We note the information at issue includes internal affairs investigation records and section 552.108 generally is not applicable to purely administrative records that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 562 at 10 (1990). However, you state the department and the Dallas County District Attorney object to release of the information at issue because it relates to a pending criminal investigation and prosecution. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of the information you have marked 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 curiam*, 536 S.W.2d 559 (Tex. 1976).

Next, we note the remaining information contains information subject to section 552.117(a)(2) of the Government Code.<sup>6</sup> Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 of the Government Code or section 552.1175 of the Government Code. Gov’t Code § 552.117(a)(2). Therefore, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

In summary, the department must withhold the submitted CR-3 accident report form we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, the information you have marked under section 552.102 of the Government Code, and the information we have marked under section 552.117(a)(2) of the Government Code. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The remaining information must be released.

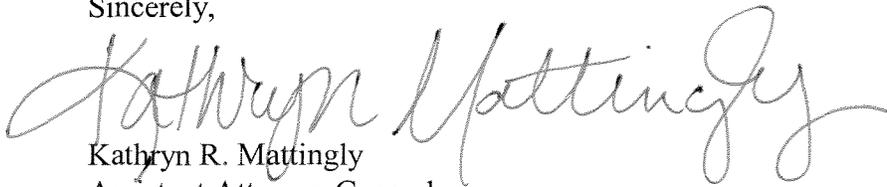
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<sup>6</sup>“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

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,

A handwritten signature in cursive script, reading "Kathryn R. Mattingly".

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 453891

Enc. Submitted documents

c: Requestor  
(w/o enclosures)