



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 21, 2012

Mr. Nathan L. Brown  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, Ninth Floor  
El Paso, Texas 79901

OR2012-07533

Dear Mr. Brown:

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# 454148.

The City of El Paso (the "city") received a request for all documents related to terminations and resignations of the El Paso Police Department ("department") personnel as a result of disciplinary action. You state you have released some information to the requestor. You claim the remaining requested information is excepted from disclosure pursuant to sections 552.107(2) and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the submitted information at issue was the subject of previous requests for rulings, in response to which this office issued Open Records Letter Nos. 2011-17636 (2011) and 2011-17952 (2011). In Open Records Letter No. 2011-17636, we concluded the responsive information may be withheld under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2011-17952, we concluded, with the exception of basic information, the information at issue may be withheld under section 552.108(a)(1) of the Government Code. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the city may rely on Open Records Letter Nos. 2011-17636 and 2011-17952 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). To the extent the submitted information is not encompassed by the previous rulings, we will address your arguments under sections 552.107(2) and 552.108 of the Government Code.

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>1</sup> Gov’t Code § 552.101. This exception encompasses information protected by other statutes, such as articles 55.01 through 55.05 of the Code of Criminal Procedure, which provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in relevant part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

*Id.* art. 55.04, § 1. This office has previously determined the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records

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<sup>1</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

are not subject to public disclosure under the [Act]”). We note a portion of the submitted information is subject to an expunction order, which you have provided to this office, issued by the 210th Judicial District Court of El Paso County, Texas. We conclude the information we have marked is confidential under article 55.03 of the Code of Criminal Procedure and must be withheld from the requestor on that basis under section 552.101 of the Government Code.<sup>2</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(a)(1) 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). We note section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *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). You state the remaining information at issue relates to a pending criminal prosecution and the district attorney’s office objects to its release. You further state release of the information at issue would interfere with the investigation and prosecution of crime. Based on these representations and our review, we conclude the 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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, section 552.108(a)(1) is applicable to the information at issue. Thus, the city may withhold the information at issue under section 552.108(a)(1) of the Government Code.

We note a portion of the information you have marked for release may be subject to section 552.117(a)(2) of the Government Code, which 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 or section 552.1175 of the Government Code.<sup>3</sup> Gov’t Code § 552.117(a). We have marked personal information pertaining to a former department officer. It is unclear, however, whether or not the officer is currently a licensed peace officer as defined

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<sup>2</sup>As we are able to make this determination, we need not address your argument against disclosure of this information.

<sup>3</sup>“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

by article 2.12. Thus, if the officer is currently a licensed peace officer as defined by article 2.12, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If, however, the officer at issue is not currently a licensed peace officer, his personal information may not be withheld under section 552.117(a)(2) of the Government Code.

If the officer at issue is no longer a licensed peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member 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). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, if the officer is no longer a licensed peace officer and made a timely election under section 552.024, the city must withhold his personal information, which we have marked, under section 552.117(a)(1). If the officer 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) of the Government Code.<sup>4</sup>

In summary, city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. With the exception of the information you have marked for release, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the officer is currently a licensed peace officer. If the officer is no longer a licensed peace officer and made a timely election under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining information you have marked 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.

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<sup>4</sup>Regardless of the applicability of section 552.117(a)(1) of the Government Code, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147.

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, appearing to read "Jennifer Burnett".

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 454148

Enc. Submitted documents

c: Requestor  
(w/o enclosures)