



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 5, 2012

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

OR2012-10350

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# 457932 (DPD Request No. 2012-04279).

The Dallas Police Department (the "department") received a request for information pertaining to a specified internal affairs investigation involving a named officer. You claim a portion of 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 information.

Initially, we note a portion of the submitted information, which we have marked, pertains to an internal affairs investigation other than the specified investigation. Such information is not responsive to the present request. This decision does not address the public availability of the non-responsive information and the department need not release such information in response to the present request.

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 release of the requested information would interfere with law enforcement. *See id.* § .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of an officer's alleged misconduct. *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 City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer); 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 information you have marked relates to a pending case or cases. You further provide a memorandum which states the officer has been indicted for First Degree Wanton Endangerment. However, the submitted information consists of the department's administrative investigation of alleged criminal conduct that occurred in Hopkinsville, Kentucky. The Hopkinsville Police Department investigated the conduct and the officer was indicted in Christian County, Kentucky. You have not explained how the department's administrative investigation pertains to any criminal matter pending with the department. Further, you have not provided a representation from the Hopkinsville 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 at issue because its release would interfere with a pending criminal investigation or prosecution. Therefore, we find you have failed to establish the applicability of section 552.108(a)(1) of the Government Code to the information at issue and it may not be withheld on that basis.

We note a portion of the submitted information is subject to section 552.102 of the Government Code.<sup>1</sup> Section 552.102(a) 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 considered the applicability of section 552.102 and 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, 347-48 (Tex. 2010). Upon review, we find the submitted information contains a date of birth subject to section 552.102, which we have marked. Accordingly, the department must withhold the information we have marked under section 552.102 of the Government Code.

Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, 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.<sup>2</sup> Gov't Code § 552.117(a)(2). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the

---

<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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The submitted information contains information, including a cellular telephone number, subject to section 552.117(a)(2). The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

We note the submitted information contains the named officer's driver's license number. Section 552.130 of the Government Code provides that information related to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(1). The department must withhold the officer's driver's license number, which we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under: (1) section 552.102 of the Government Code; (2) section 552.117(a)(2) of the Government Code; and (3) section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/bs

---

<sup>3</sup>The information being released contains a social security number. We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public disclosure without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Ref: ID# 457932

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---