



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2012

Ms. P. Armstrong
Ms. J. Middlebrooks
Assistant City Attorneys
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-10624

Dear Ms. Armstrong and Ms. Middlebrooks:

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# 458313 (DPD Request Nos. 2012-04578, 2012-06802).

The Dallas Police Department (the "department") received requests for information related to Control Number 2011-360, an internal affairs investigation involving a named officer. The department claims marked portions of the submitted information are excepted from disclosure under sections 552.102, 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted representative sample of information.¹

Initially, the department states a portion of the requested information was the subject of a previous request for ruling, in response to which this office issued Open Records Letter No. 2012-02841 (2012). In that ruling, we determined the department must withhold a portion of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and may withhold the remaining information under section 552.108(a)(1) of the Government Code. We have no indication

¹We 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 that those records contain substantially different types of information than that submitted to this office.

there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department may rely on Open Records Letter No. 2012-02841 as a previous determination and withhold the identical information in accordance with that ruling. *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). We will address the department's arguments against release of the information not encompassed by Open Records Letter No. 2012-02841.

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).

In this instance, the submitted information pertains to an internal affairs investigation. However, the department explains the submitted information pertains to a pending investigation or prosecution of an offense and provides a memorandum indicating the officer is the subject of a pending criminal investigation and was arrested by the department. The department argues release of the marked information could hinder the criminal investigation and prosecution. Based on these representations and our review, we conclude release of the marked 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, the department may withhold the information it marked under section 552.108(a)(1) of the Government Code.

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). Accordingly, the department must withhold the officer's date of birth it marked under section 552.102(a) 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.² Gov't Code § 552.117(a)(2). We find the department must withhold the information we marked under section 552.117(a)(2) of the Government Code.

The department marked the named officer's driver's license number. Section 552.130 of the Government Code provides information related to a driver's license issued by a Texas agency or an agency of another state or country is excepted from public release. *Id.* § 552.130(a)(1). We agree the department must withhold the driver's license number it marked under section 552.130 of the Government Code.

Lastly, section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The department states an employee's identification number is the same number used for his or her City of Dallas credit union bank account, with one additional digit. Therefore, the department must withhold the employee identification number it marked under section 552.136 of the Government Code.

In summary, the department may rely on Open Records Letter No. 2012-02841 as a previous determination and withhold any previously ruled upon information in accordance with that ruling. To the extent the information is not subject to Open Records Letter No. 2012-02841, the department may withhold the information it marked under section 552.108(a)(1) of the Government Code. The department must withhold: 1) the date of birth under section 552.102(a) of the Government Code; 2) the information we marked under section 552.117(a)(2) of the Government Code; 3) the driver's license number it marked under section 552.130 of the Government Code; and 4) the employee identification number it marked under section 552.136 of the Government Code. The department must release the remainder.

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.

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

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/bs

Ref: ID# 458313

Enc. Marked documents

c: Requestor
(w/o enclosures)