



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2012

Ms. P. Armstrong  
Assistant City Attorney  
City of Dallas  
Criminal Law and Police Division  
1400 South Lamar  
Dallas, Texas 75215

OR2012-13173

Dear Ms. Armstrong:

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# 462547 (DPD ORR# 2012-06632).

The Dallas Police Department (the "department") received a request for any disciplinary hearing notes, including recordings, and executive briefings from hearings conducted during a specified time period. You claim some of the requested information is excepted from disclosure under sections 552.108 and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you inform us some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter

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<sup>1</sup>You also raise section 552.101 of the Government Code in conjunction with section 552.136. However, section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision No. 676 at 1-3 (2002).

<sup>2</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 that those records contain substantially different types of information than that submitted to this office.

Nos. 2012-10813 (2012), 2012-00752 (2012), and 2011-10813 (2011). In Open Records Letter No. 2012-10813, the Tarrant County District Attorney's Office (the "district attorney's office") submitted an affidavit objecting to the release of the information at issue and we concluded, in relevant part, with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. You have submitted a representation stating the district attorney's office continues to object to the release of the information at issue. In Open Records Letter No. 2012-00752, we concluded, in relevant part, the department may withhold certain marked information under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2011-10813, we concluded, with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code. We are unaware of any change in the law, facts, and circumstances on which the previous rulings are based. Therefore, the department may continue to rely on Open Records Letter Nos. 2012-10813, 2012-00752, and 2011-10813 as previous determinations and withhold or release the previously ruled upon information in accordance with these rulings. *See* Gov't Code § 552.301(f); 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).

Section 552.108 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).

In this instance, the remaining information consists of records of internal affairs investigations. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and 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). We note 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 Nos. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body agency may withhold the information under section 552.108 if (1) it

demonstrates the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information.

You state the remaining information pertains to active criminal investigations and prosecutions of the alleged offenses against the officers at issue. You also state the district attorney's office objects to the release of the information pertaining to control number 2011-390 because it pertains to a pending prosecution being conducted by the district attorney's office. Based on your representations, we find 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). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

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.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We understand employee identification numbers are used in conjunction with one additional digit to access the employees' City of Dallas credit union bank accounts. Thus, we agree the department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

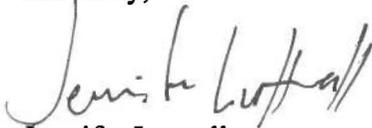
In summary, the department may continue to rely on Open Records Letter Nos. 2012-10813, 2012-00752, and 2011-10813 as previous determinations and withhold or release the previously ruled upon information in accordance with these rulings. The department may withhold the information it has marked under section 552.108(a)(1) of the Government Code. The department must withhold the information it marked under section 552.136 of the Government Code. The remaining information 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.

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 that reads "Jennifer Luttrall".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 462547

Enc. Submitted documents

c: Requestor  
(w/o enclosures)