



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2012

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

OR2012-13181

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# 462520 (ORR# 2012-06627).

The Dallas Police Department (the "department") received a request for internal affairs morning reports for May of 2012. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

The submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-13004 (2012). In that ruling, we determined, in regard to the submitted information, the department must withhold the identifying information of undercover officers under section 552.152 of the Government Code, but must release the remaining information. Our determination in Open Records Letter No. 2012-13004 to withhold the identifying information of undercover officers in the

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

submitted documents under section 552.152 is dispositive of your current argument to withhold this information under section 552.101 of the Government Code. However, you also now seek to withhold a portion of the submitted information under section 552.108 of the Government Code.² Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the department may not now withhold the information that was previously released, unless its release is expressly prohibited by law or the information is confidential by law. As noted above, you now raise section 552.108 for the information we previously ordered released. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Therefore, the department may not withhold any portion of the submitted information under section 552.108. Accordingly, as we have no indication the law, facts, and circumstances on which Open Records Letter No. 2012-13004 was based have changed, we conclude the department must continue to rely on that ruling as a previous determination and withhold the identifying information of undercover officers in the submitted documents under section 552.152 of the Government Code and release the remaining information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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).

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, 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

²We note the department did not assert section 552.108 for any of the submitted information in Open Records Letter No. 2012-13004.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 462520

Enc. Submitted documents

c: Requestor
(w/o enclosures)