ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2012

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-13478

Dear 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# 463052 (DPD PIR# 2012-06660).

The Dallas Police Department (the "department") received a request for a specified investigation file pertaining to a named former department officer. You claim 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 representative sample of information.[1]

Initially, you indicate some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-10636 (2012). In that ruling, we determined the department must withhold the information it marked and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; with the exception of basic information, may withhold the information it marked under section 552.108(a)(1) of the Government Code; and must release the remaining information. We have no indication there has been any

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

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. 2012-10636 as a previous determination and withhold or release 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).

Section 552.108(a) 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: (1) 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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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 submitted information pertains to an internal affairs investigation. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that 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). However, you represent to this office the submitted information relates to a pending criminal prosecution, and release of the information would interfere with the investigation or prosecution of crime. Based on your representations, we agree the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, the department may rely on Open Records Letter No. 2012-10636 as a previous determination and withhold or release the identical information in accordance with that ruling. The department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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

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,

Claire Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 463052

Enc. Submitted documents

c: Requestor
(w/o enclosures)