



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2012

Mr. David Hamilton
City Attorney
City of Reno
3830 FM 195
Paris, Texas 75462-1621

OR2012-14100

Dear Mr. Hamilton:

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# 464475.

The City of Reno (the "city") received a request for copies of the information received by the city's police chief from the Paris Police Department regarding a specified incident, the date and time the city's police chief was notified of the specified incident, and copies of the information that was presented by the city's police chief to the city's council at two specified meetings. You claim that the submitted information is excepted from disclosure under sections 552.102, 552.108, 552.117, and 552.132 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the Lamar County Attorney's Office (the "county attorney's office"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor seeks an answer to a factual question in a portion of the request. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See*

¹Although you raise section 552.111 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See* Gov't Code §§ 552.301(b), (e), .302.

Open Records Decision No. 561 at 8 (1990). The submitted information reflects the city has made a good faith effort to do so.

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(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). You state the submitted information pertains to an ongoing criminal investigation. We have received a letter from the county attorney’s office objecting to disclosure of the information at issue because its release would interfere with their pending prosecution. Based on these representations and our review, we conclude release of the submitted information would interfere with the detection, investigation, or prosecution of a 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). Therefore, we find section 552.108(a)(1) is applicable to the submitted information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

You claim a portion of the basic information is protected by section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of a peace officer, regardless of whether the peace officer made an election under sections 552.024 or 552.1175 of the Government Code to keep such information confidential. Gov’t Code § 552.117(a); *see also id.* § 552.024. However, section 552.117 protects personal privacy, and the requestor is the individual whose information is at issue. Therefore, the requestor has a right of access to his own personal information, and that information may not be withheld from him under section 552.117(a)(2). *See* Gov’t Code § 552.023 (person has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests

²Because our ruling is dispositive, we do not address your remaining arguments against disclosure.

information concerning himself). Accordingly, the city may not withhold any of the basic information under section 552.117 of the Government Code.

We understand you to assert some of the basic information is excepted from disclosure under section 552.132 of the Government Code. Section 552.132 provides as follows:

(a) Except as provided by Subsection (d), in this section, “crime victim or claimant” means a victim or claimant under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) The following information held by the crime victim’s compensation division of the attorney general’s office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

(c) If the crime victim or claimant is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim or claimant and the amount of compensation awarded to that crime victim or claimant are public information and are not excepted from [required public disclosure].

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general’s office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim[.]

(e) If the employee fails to make an election under Subsection (d), the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.

Id. § 552.132. We note the information at issue is held by the city, not the crime victim’s compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Additionally, you provide no representation the victim is an employee of any governmental body. Thus, you have failed to demonstrate the applicability of section 552.132(d) to the information at issue. Accordingly, we conclude the city may not

withhold any portion of the basic information under section 552.132 of the Government Code.

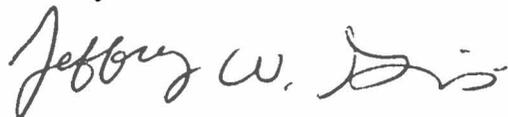
You assert some of the remaining basic information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102 of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwanted invasion of personal privacy.” *Id.* § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. *See Indus. Found.* at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the Third Court of Appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court expressly disagreed with *Hubert’s* interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 342 (Tex. 2010). The supreme court then 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. *See id.* at 346. Upon review, we find no portion of the remaining information is excepted under section 552.102(a). Accordingly, the city may not withhold any portion of the basic information on that basis.

In summary, with the exception of basic information, which must be released, the city 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/tch

Ref: ID# 464475

Enc. Submitted documents

c: Requestor
(w/o enclosures)