



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2012

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

OR2012-16819

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# 468483 (ORR# 2012-09432).

The Dallas Police Department (the "department") received a request for any and all arrest warrant affidavits pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.102, 552.108, and 552.117 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, we note portions of the submitted information, which we have marked, are not responsive to the request because they are not arrest warrant affidavits. This ruling does not

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<sup>1</sup>Although you do not raise section 552.102 of the Government Code in your brief, we understand you to raise this exception based on your markings in the submitted information.

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

address the public availability of the information that is not responsive to the request, and the department is not required to release this information in response to the request.<sup>3</sup>

Section 552.102(a) of the Government Code 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 has 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 Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Thus, under *Texas Comptroller*, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. In this instance, the birth date you have marked is contained in an affidavit for arrest warrant. Thus, as the birth date is not maintained in an employment context, we conclude the department may not withhold the marked birth date under section 552.102(a) of the Government Code.

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 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 information you have marked relates to a pending criminal investigation. Based on your representation and our review, we conclude that 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). Thus, the department may withhold the marked information under section 552.108(a)(1) of the Government Code. The remaining responsive 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,

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<sup>3</sup>As our ruling is dispositive for this information, we need address your arguments against its disclosure.

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 black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/dls

Ref: ID# 468483

Enc. Submitted documents

c: Requestor  
(w/o enclosures)