



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2012

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

OR2012-18785

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# 472792 (ORR# 2012-11609).

The City of Dallas (the "city") received a request for any information related to a specified internal affairs investigation. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a)(1) 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). Section 552.108 is generally not applicable to 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.*

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.

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). In this instance, however, you inform us the information you have marked under section 552.108(a)(1) is related to a pending criminal prosecution. You explain that both the Dallas Police Department and the Dallas County District Attorney's Office object to disclosure of this information at this time because its release would interfere with the pending prosecution. Based on your representations and our review, we determine release of the information you have marked under section 552.108(a)(1) 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. 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 city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

We note portions of the remaining information are subject to section 552.102 of the Government Code.² Section 552.102(a) 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 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. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we conclude the city must withhold the birth dates we have marked under section 552.102(a) of the Government Code.³

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. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, we conclude the city must withhold the personal information of the peace officer you have marked and we have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state, or another state or country, is excepted from public release. *Id.* § 552.130(a)(1)-(2). Upon review, we conclude the city must withhold the motor vehicle

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³As our ruling for this information is dispositive, we need not address your arguments against its release.

record information you have marked and we have marked under section 552.130 of the Government Code.⁴

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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). You explain that employee identification numbers are used in conjunction with one additional digit to access the employees’ city credit union bank accounts. Thus, we agree the city must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.102(a) of the Government Code. The city must withhold the information you have marked and we have marked under sections 552.117(a)(2) and 552.130 of the Government Code. The city must withhold the employee identification number you have marked under section 552.136 of the Government Code. The city must release the remaining information.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

⁴We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130(a)(2) of the Government Code, without the necessity of seeking a decision from this office.

Ref: ID# 472792

Enc. Submitted documents

c: Requestor
(w/o enclosures)