



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2012

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2012-19976

Dear Mr. Alicie:

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# 474401.

The Baytown Police Department (the "department") received a request for report number 12-37737. You state the department will redact partial social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.108, 552.1175, 552.130, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

You claim section 552.108 of the Government Code for portions of the submitted information. 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

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

²Although you raise section 552.151 of the Government Code for portions of the submitted information, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

body claiming section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *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 case. Based upon your representation, we conclude release of the information you have marked will 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). Accordingly, section 552.108(a)(1) of the Government Code is applicable to the information you have marked.

However, we note 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 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identities of the arresting and investigating officers. *See* ORD 127 at 3-4. However, the basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Portions of the information you have marked under section 552.108 consist of the identities of investigating officers in the case at issue. This information may not be withheld under section 552.108(a)(1). Thus, with the exception of the basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.

You argue portions of the remaining information are subject to section 552.1175 of the Government Code. Section 552.1175 protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. *Id.* § 552.1175(a)(1); *see also* Code Crim. Proc. Art. 2.12(27) (officers commissioned by the state fire marshal under Government Code chapter 417 are peace officers), (33) (fire marshal and officers, inspectors, or investigators commissioned by an emergency services district under Health and Safety Code chapter 775 are peace officers). Accordingly, to the extent the individuals whose personal information you marked are currently licensed as peace officers and elect to restrict access to their information in accordance with section 552.1175(b), the department must withhold the information you marked under section 552.1175 of the Government Code. Conversely, if the individuals whose information is at issue are not currently licensed as peace officers or do not elect to restrict access to their information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

You seek to withhold the names and identifying information of undercover officers in the remaining information, including in the basic information, pursuant to section 552.152 of the Government Code, which provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You state the release of the undercover police officers' names and identifying information would "subject the officers to a substantial threat of physical harm." Based on your representation, we find the department has demonstrated release of this information would subject the officers to a substantial threat of physical harm. We therefore conclude the department must withhold the officers' names and identifying information, which you have marked, under section 552.152 of the Government Code.

In summary, with the exception of the basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. To the extent the individuals whose personal information you marked are currently licensed as peace officers and elect to restrict access to their information in accordance with section 552.1175(b), the department must withhold the information you marked under section 552.1175 of the Government Code. The department must withhold the officers' names and identifying information you marked under section 552.152 of the Government Code. The department 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 474401

Enc. Submitted documents

c: Requestor
(w/o enclosures)