



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2013

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2013-04373

Dear Ms. Cost:

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# 481420 (PIR Nos. 12-4264, 12-4287, 12-4289).

The Texas Department of Public Safety (the "department") received three requests for memos, documents, reports, and other information pertaining to a specified traffic stop. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state a portion of the responsive information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-04297 (2013). In that ruling, we determined the department may not withhold the dash cam video recordings under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code. We further determined the department must withhold specified portions of the dash cam video recordings under section 552.101 of the Government Code in conjunction with constitutional and common-law privacy and to the extent the officers at issue elect to restrict access to their information in accordance with section 552.1175(b), the information we have noted under section 552.1175. We also ruled the department must withhold the information we noted under section 552.130. You now seek to withhold the dash cam video recordings under section 552.108 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); see also Open Records Decision No. 400 (1983)*

(governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the department may not now withhold the information that was previously released, unless its release is expressly prohibited by law or the information is confidential by law. As noted above, you now raise section 552.108 for the information that was previously released. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Therefore, the department may not withhold the dash cam video recordings under section 552.108. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department must rely on Open Records Letter No. 2013-04297 as a previous determination and withhold or release the dash cam video recordings 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). Next, we will address your arguments for the submitted information.

We note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains a court-filed document that is subject to subsection 552.022(a)(17), which must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). You seek to withhold the information subject to subsection 552.022(a)(17) under sections 552.101 and 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the marked court-filed document may not be withheld under section 552.108 of the Government Code. However, as section 552.101 of the Government Code applies to confidential information, we will consider your argument under section 552.101 to the information at issue.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information other statutes make confidential. Section 411.00755 of the Government Code states in pertinent part:

(b) The personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, except the department shall release in accordance with Chapter 552:

(1) any letter, memorandum, or document relating to:

...

(B) misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action[.]

Id. § 411.00755(b). Section 411.00755 defines a personnel record, in part, as “any letter memorandum, or document maintained by the department that relates to a commissioned officer of the department[.]” *Id.* § 411.00755(a). For the purpose of section 411.00755, “disciplinary action” means discharge, suspension, or demotion. *Id.* § 411.0072(a)(1).

You state the submitted information is related to a complaint against and investigation of commissioned officers of the department, and you state the investigation has not resulted in disciplinary action against the officers. Thus, you contend the submitted information consists of the personnel records of the officers at issue. However, we note you state the submitted information consists of records pertaining to a criminal investigation of the department. The present requests do not specifically seek any officer’s personnel records. As stated above, the requestors seeks records pertaining to a specified incident. Because the requestors generally seeks information pertaining to the specified incident, both an officer’s personnel records and any copies of investigatory materials the department maintains for law enforcement purposes are responsive. The department may not engraft the confidentiality afforded to personnel records under section 411.00755(b) to records that exist independently of the personnel records. Therefore, we find the submitted information is not confidential under section 411.00755(b) and it may not be withheld under section 552.101 on that basis.

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 remaining information pertains to an ongoing criminal investigation. Based on your

representation and our review, we conclude the release of the information not subject to section 552.022(a)(17) 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, section 552.108(a)(1) is applicable to the information not subject to section 552.022(a)(17).

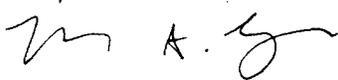
However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the department may withhold the information not subject to section 552.022(a)(17) under section 552.108(a)(1) of the Government Code.

In summary, we conclude the department must rely on Open Records Letter No. 2013-04297 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of basic information, the department may withhold the information not subject to section 552.022(a)(17) under section 552.108(a)(1) of the Government Code. The remaining 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, 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/dls

Ref: ID# 481420

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)