



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2013

Ms. Erin A. Higginbotham
Counsel for the City of Pflugerville
Denton, Navarro, Rocha & Bernal
2500 West William Cannon, Suite 609
Austin, Texas 78745

OR2013-07345

Dear Ms. Higginbotham:

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# 486210.

The Pflugerville Police Department (the "department"), which you represent, received a request for information related to a specified complaint as well as the general orders, police internal affairs process, and "discipline matrix" for the department. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portions of the request for general orders, police internal affairs process, or "discipline matrix." To the extent any information responsive to these portions of the request existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

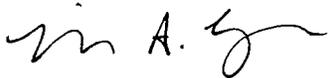
Next, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the department received the request for information or consists of the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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 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). We note section 552.108 is generally not applicable to the 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. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. 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); *see also* Open Records Decision No. 350 at 3-4 (1982). You state the information relates to both a pending internal affairs investigation, and the investigation of a crime. You also state release of the information will interfere with the detection, investigation, and prosecution of crime. Based upon your representations, we conclude release of the responsive information 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). Thus, the department may withhold the responsive 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 486210

Enc. Submitted documents

c: Requestor
(w/o enclosures)

