



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2013

Ms. T. Trisha Dang
Assistant City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2013-08815

Dear Ms. Dang:

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# 488314.

The Missouri City Police Department (the "department") received a request for the personnel records of a named department police officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.119, 552.130, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information may be made expressly public under section 552.022 of the Government Code, which provides, in relevant part, as follows:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹Although you also raise section 552.1175 of the Government Code, the proper exception in this instance is section 552.117 of the Government Code because the department holds the information at issue in an employment context.

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(15). The submitted documents contain a job description, which is usually open to the public as part of a job posting. If the department regards the submitted job description as open to the public, then the department may withhold this information, only to the extent it is made confidential under the Act or other law. Although you argue this information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, those sections are discretionary exceptions and do not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the submitted job description may not be withheld under either section 552.103 or section 552.108 pursuant to section 552.022(a)(15) if it is regarded by the department as open to the public.

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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the personnel records pertain to an officer who is the arresting officer and witness in a pending criminal prosecution. You have provided a letter from the Fort Bend County District Attorney's Office (the “district attorney's office”), in which the district attorney's office objects to the release of the information at issue because of the officer's involvement in this pending prosecution. Based on these representations and our review, we find the release of the information at issue 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 describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.²

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, with the exception of the submitted job description if it is subject to section 552.022(a)(15) of the Government Code, the department may withhold the submitted information pursuant to 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 488314

Enc. Submitted documents

c: Requestor
(w/o enclosures)