



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2013

Mr. Stephen A. Cumbie
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2013-10870

Dear Mr. Cumbie:

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# 491397 (PIR Nos. W025031 and W024942).

The City of Fort Worth (the "city") received two requests for all disciplinary letters and surveillance video pertaining to the termination of a named police officer and the notice or letter of indefinite suspension of the named police officer. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note portions of the submitted information, which we have marked and indicated, were the subject of a previous request for information as a result of which this office issued Open Records Letter No. 2013-08959 (2013). In this ruling, we concluded the city must withhold the information we marked under section 552.117(a)(2) of the

¹Although you raise section 552.1175 of the Government Code for information pertaining to the named officer, we note section 552.117 is the proper exception to raise for information held in an employment context. Additionally, although you raise section 552.117(a)(1) of the Government Code as an exception to disclosure of this information, we note section 552.117(a)(2) is the proper exception to raise when seeking to withhold information related to a peace officer. *See* Gov't Code § 552.117(a)(2).

²We 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.

Government Code, to the extent the information we marked pertained to a currently licensed peace officer. To the extent the employee was not a currently licensed peace officer and timely requested confidentiality under section 552.024 of the Government Code, we concluded the city must withhold the marked information under section 552.117(a)(1) of the Government Code. In either event, we concluded the city must release the remaining information. The city now seeks to withhold the information subject to Open Records Letter No. 2013-08959 under sections 552.103 and 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 under 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). Because sections 552.103 and 552.108 do not prohibit the release of information or make information confidential, the city may not now withhold any previously released information under these exceptions. *See 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. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Thus, as we have no indication the law, facts, and circumstances on which Open Records Letter No. 2013-08959 was based have changed, the city must continue to rely on Open Records Letter No. 2013-08959 as a previous determination and withhold or release the information at issue in accordance with the previous ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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). However, we will address the submitted arguments for the remaining information not encompassed by the previous ruling.

Section 552.108(a)(1) of the Government Code excepts from disclosure information 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). Generally, 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). However, section 552.108 is generally not applicable to an internal administrative investigation involving a law enforcement officer that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); Open Records Decision No. 562 at 10 (1990); *see also Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to an internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). You inform us the remaining information relates to a pending criminal investigation by the city's police

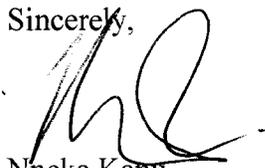
department and possible prosecution by the Tarrant County District Attorney's Office. Based on this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court 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). Therefore, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the city must continue to rely on Open Records Letter No. 2013-08959 as a previous determination and withhold or release the information we have marked and indicated in accordance with that ruling. The city may withhold the remaining 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 491397

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.