



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2013

Mr. Chris Pirtle
Underwood Law Firm, P.C.
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2013-14844

Dear Mr. Pirtle:

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# 497699.

The City of Plainview (the "city"), which you represent, received an initial request for (1) any internal affairs investigative report completed about a named captain of the city's police department (the "department") for a specified period of time and (2) any performance evaluation, employment recommendation or document regarding that employee's employment status for the same period of time. The requestor subsequently revised his request and asked for "certain documents" related to the employee's employment with the department to include any letters written by other department captains recommending the employee be terminated.¹ You state the city has released some of the requested information but claim the submitted information is either not responsive to the request for information or excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

¹The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

You assert the submitted information is not responsive to the request for information. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8 (1990). In this case, as you have submitted information for our review and raised exceptions to disclosure of this information, we consider the city to have made a good-faith effort to identify the information that is responsive to the request. Accordingly, we will address the applicability of the claimed exception to the submitted information.

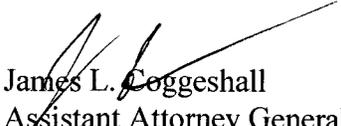
Section 552.108(a)(1) of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. 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), 552.301(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); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982).

The submitted information is part of an internal administrative investigation of a department officer. You inform us the officer at issue “was charged with, and has since been acquitted of, crimes relating to the allegations that make up the internal investigation.” Nevertheless, you assert the department is “unable to ascertain whether further criminal charges may be appropriate against [the officer] or against other individuals” and argue release of the submitted information would interfere with the ongoing investigation and any future criminal prosecutions. However, having considered your representations we find you have not demonstrated 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the city may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code. Instead, the city must release the submitted information to the requestor.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 497699

Enc. Submitted documents

c: Requestor
(w/o enclosures)