



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 11, 2013

Mr. Steven E. Meyer  
Assistant City Attorney  
Arlington Police Department  
Mail Stop 04-0200  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2013-21574

Dear Mr. Meyer:

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# 508110 (Police Department Reference No. 12821).

The Arlington Police Department (the "department") received a request for all information pertaining to a specified accident involving an officer, which occurred on or about January 18, 2013, including all investigative records or disciplinary action recommendations by the department's internal review board. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we must address the department's obligations under the Act. Section 552.301(b) requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." Gov't Code § 552.301(b). The department received the request for information on September 16, 2013. Accordingly, you were required to request a ruling from our office and state the exceptions that apply by September 30, 2013. While the department raised sections 552.101 and 552.108 within the ten-business-day time period as required by section 552.301(b), the department did not raise section 552.103, section 552.117, or section 552.152 of the Government Code until October 1, 2013. Accordingly, we conclude

the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to its claims under sections 552.103, 552.117, and 552.152.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Section 552.103 of the Government Code is discretionary in nature. *See* Gov't Code § 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); 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). In failing to comply with section 552.301(b) with respect to section 552.103, the department has waived this exception, and no portion of the information may be withheld under section 552.103 of the Government Code. However, sections 552.117 and 552.152 of the Government Code can provide compelling reasons to withhold information. Therefore, we will consider the applicability of sections 552.117 and 552.152 to the submitted information. We will also consider your timely-raised claims under sections 552.101 and 552.108.

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 protected by other statutes, such as chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or (e), accident reports are privileged and for the confidential use of certain specified entities. Transp. Code § 550.065(b). The submitted CR-3 accident report was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided the department with two of the three requisite pieces of information for the release of the CR-3 accident report. Accordingly, the department must withhold the CR-3 accident report form in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code.

Section 552.108(b)(1) of the Government Code exempts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b) exempts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531(1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You seek to withhold the remaining information under section 552.108(b)(1). We note this information relates to an internal affairs investigation. Section 552.108 is generally not applicable to 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, 525-26 (Tex. Civ. 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). You state the remaining information reveals the staffing information of a police officer. You argue release of this information will enable enterprising criminals to target the officer by knowing when and where the officer may be on any given day. Based on your representations and our review, we agree the release of the information we have marked would interfere with law enforcement or crime prevention. Accordingly, the department may withhold this information under section 552.108(b)(1) of the Government Code. However, we find the department has not demonstrated how releasing the remaining information would interfere with law enforcement or crime prevention. Thus, the department may not withhold any of the remaining information under section 552.108(b)(1).

You seek to withhold the remaining information at issue under section 552.152 of the Government Code. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You argue that the remaining information relates to the scheduling information of an officer. Upon review, we find you have failed to demonstrate that release of the remaining information would subject the named officer to a substantial risk of physical harm. Accordingly, the department may not withhold any portion of the remaining information under section 552.152 of the Government Code. *See* Open Records Decision No. 364 (1983).

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential.<sup>1</sup> Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). You state the responsive information contains mobile telephone numbers of the named officer and other police officers. Upon review, we have marked an officer's cellular telephone number under section 552.117(a)(2) of the Government Code; however, this information may be withheld only if a governmental body does not pay for the cellular telephone service. We find the remaining information does not contain any additional cellular telephone numbers of peace officers. As such, the department may not withhold any of the remaining information under section 552.117(a)(2) of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]"<sup>2</sup> Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub.*

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<sup>1</sup>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)(1)-(2).

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

*Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the information we have marked must be withheld under section 552.102(a) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information we have marked and indicated in the submitted pictures and documents under section 552.130 of the Government Code. Additionally, the department must withhold the discernable license plate numbers in the dash camera video recordings under section 552.130 of the Government Code.<sup>3</sup>

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, the department must withhold the credit card information we have indicated on the submitted pictures under section 552.136 of the Government Code.<sup>4</sup>

In summary, the department must withhold the CR-3 accident report form in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. The department may withhold the information we have marked pursuant to section 552.108(b)(1). The department must withhold (1) the cellular telephone number we have marked under section 552.117(a)(2) of the Government Code, if the cellular telephone service is not paid for by a governmental body; (2) the date of birth we have marked under section 552.102(a) of the Government Code; (3) the motor vehicle record information we have marked and indicated in the submitted pictures and documents, and the discernable license plate numbers in the dash camera video recordings, under section 552.130 of the Government Code; and (4) the credit card information we have indicated on the submitted pictures under section 552.136 of the Government Code. The remaining information must be released.

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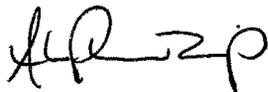
<sup>3</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>4</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

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](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,



Alia K. Plasencia-Bishop  
Assistant Attorney General  
Open Records Division

AKPB/dls

Ref: ID# 508110

Enc. Submitted documents

c: Requestor  
(w/o enclosures)