



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2014

Mr. Charles H. Weir
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2014-01148

Dear Mr. Weir:

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# 511595 (COSA File No. W019495).

The City of San Antonio (the "city") received a request for information pertaining to an internal affairs investigation of a named police officer. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the submitted information consists of internal affairs investigation records. 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, 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); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state the attachments in document number 2 and document numbers 3, 4, 5, 6, and 8 relate to an ongoing criminal investigation that is the subject of the internal investigation. You also state release of these documents would interfere with the pending criminal investigation. Based on these representations and our review of the submitted information, we conclude 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 n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information you seek to withhold.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed to be public). Therefore, with the exception of basic information, the city may withhold the attachments in document number 2 and documents numbers 3, 4, 5, 6, and 8 under section 552.108(a)(1) of the Government Code.

We note the remaining information contains information subject to section 552.117(a)(2) of the Government Code, which excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See id.* § 552.117(a)(2). Section 552.117 also protects a peace officer’s personal cellular telephone number if a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 670 at 6 (2001) (Gov’t Code § 552.117(a)(2) excepts from disclosure peace officer’s cellular telephone or pager number if officer pays for cellular telephone or pager service). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the telephone number we have marked under section 552.117(a)(2) of the Government Code if it is the peace officer’s home telephone number. However, if the marked telephone number is a cellular telephone number, the city must withhold it under section 552.117(a)(2) only if a governmental body does not pay for the cellular telephone service. Conversely, if the telephone number is a cellular telephone number and the telephone service is paid for by a governmental body, the marked telephone number may not be withheld under section 552.117(a)(2).

In summary, with the exception of basic information, the city may withhold the information you seek to withhold under section 552.108(a)(1) of the Government Code. The city must withhold the telephone number we have marked under section 552.117(a)(2) of the Government Code. However, if the marked telephone number is a cellular telephone

number, the city must withhold it under section 552.117(a)(2) only if a government body does not pay for the cellular telephone service. The remaining information must be released.

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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 511595

Enc. Submitted documents

c: Requestor
(w/o enclosures)