



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 30, 2014

Mr. Steven E. Meyer  
Assistant City Attorney  
City of Arlington  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2014-01872

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# 512478 (APD Ref. No. 13327).

The Arlington Police Department (the "department") received a request for information related to the requestor, two specified cases, and a specified incident number.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup>You state the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Initially, we note you have only submitted a police report involving the requestor. You have not submitted for our review any information pertaining to the rest of the information requested. To the extent any such information was maintained by the department on the date the department received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.108(b)(1) of the Government Code excepts 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[.]” *Id.* § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327(Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You seek to withhold the submitted report, including the identity of an undercover officer, under section 552.108(b)(1) of the Government Code. You contend release of the submitted information would interfere with law enforcement and crime prevention because it would reveal the officer's sensitive assignments and law enforcement methods and techniques, and strategies, which would greatly compromise the security or operations of the department.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes the names of the investigating officers. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, the undercover officer was an investigating officer involved in the incident at issue in the submitted information. Thus, the department may not withhold the officer's identifying information under section 552.108(b)(1) of the Government Code. Furthermore, we find you have failed to demonstrate how release of any of the remaining information would interfere with law

enforcement or prosecution. Accordingly, we find you have failed to demonstrate the applicability of section 552.108(b)(1) of the Government Code to the submitted information, and none of it may be withheld on this basis.

We note some of the submitted information is subject to section 552.152 of the Government Code.<sup>2</sup> 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 indicate the release of the undercover officer's identity would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the officer's identifying information. Accordingly, we conclude the department must withhold the officer's identifying information, which we have marked, under section 552.152 of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.<sup>3</sup>

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

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note the requestor in this instance has a right of access to his own social security number and motor vehicle record information, which is information that would otherwise be excepted from release under the Act. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); *see also* ORD 481 at 4 (privacy theories not implicated when person or person's agent asks governmental body for information concerning the person). Should the department receive a request for this information from a different requestor, we note the department may redact social security numbers under section 552.147(b) of the Government Code and driver's license numbers in accordance with section 552.130(c) of the Government Code without seeking a decision from this office. *See* Gov't Code §§ 552.130(d)-(e), .147(b).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 512478

Enc. Submitted documents

c: Requestor  
(w/o enclosures)