ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2014

Mr. Thomas A. Gowsdz
City Attorney
Legal Department
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2014-21606

Dear Mr. Gowsdz:

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# 544973.

The City of Victoria (the "city") received a request for all records pertaining to a specified incident, including eighteen specified categories of information.[1] You indicate the city does not have information responsive to some of the specified categories of information listed in the request.[2] 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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[1]You inform us, and provide documentation demonstrating, the requestor modified and clarified her request. *See* Gov't Code § 552.222 (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

[2]The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. — San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We note the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We understand you to claim responding to the portion of the request seeking "[a]ll Use of Force, Shooting Review Board, and Deadly Force Review Board files involving the shooting of a dog" would be cumbersome because it would require the city to manually search through every report of this type. We note, however, a governmental body may not refuse to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Further, we understand the information responsive to this portion of the request consists of information that is created or maintained by the city. In this instance, the request for information does not ask the city to answer questions, perform legal research, or create new information; rather, the request requires the city to locate records that the city maintains. We note that you have submitted for our review a use of force report, which you have marked Attachment 16, that is responsive to this portion of the request for information. Because you have submitted information for our review, we believe you have made a good faith effort to relate the request to information the city maintains. Therefore, we will consider your argument to withhold this information.

Next, we note a portion of the instant request for information seeks the "entire [city p]olice [d]epartment manual/policies and procedures in effect on the date of" the incident. Although you have submitted the city police department's general order related to the use of force, we note you have not submitted any other information responsive to the request for police department policies and procedures. Accordingly, to the extent any other information responsive to the request for police policies or procedures existed on the date the city received the request, the city must generally release this information at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). However, we note the remaining requested policies and procedures may have been the subject of previous rulings issued by this office, including Open Records Letter Nos. 2012-11671 (2012), 2009-11778 (2009), and 2009-09231 (2009). Thus, to the extent the law, facts, or circumstances on which the prior rulings were based have not changed, the city may continue to rely on those rulings as previous determinations and withhold or release the information at issue in accordance with them. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). Because the facts and circumstances have changed with respect to the submitted general order relating to the use of force, the city may not rely on any previous ruling of this office with respect to this information, and we will address your argument against its disclosure.

Next, you state only the information which you have marked in Attachment 11 is responsive to the present request, and the remaining information in Attachment 11 is not responsive to the present request. This ruling does not address the public availability of the non-responsive information, and the city need not release it in response to this request.

Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). 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." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). 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). Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d 320; *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, this office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is 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 claim the submitted records of the city's "internal investigation includes interviews with parties who could be subject to harassment as a result of public release of an investigation that is ongoing." You also state the release of Attachment 12, a general order to the city's police department related to the use of force and discharging of weapons, "could impair an officer's ability to arrest a suspect by placing individuals at an advantage in confrontations with police." Upon review, we find the release of the information we have marked in Attachment 12 would interfere with law enforcement and crime prevention. Accordingly, the city may withhold the information we have marked in Attachment 12 under section 552.108(b)(1) of the Government Code. However, we find the city has not demonstrated the release of the remaining information would interfere with law enforcement and crime prevention, and it may not withhold any portion of the remaining information under section 552.108(b)(1) 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."[3] 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. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Therefore, the city must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.[4] Gov't Code § 552.117(a)(2). Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *Id.* § 552.130(a)(1)-(2). Therefore, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city may withhold the information we have marked in Attachment 12 under section 552.108(b)(1) of the Government Code. The city must withhold the information we have marked under sections 552.102(a), 552.117(a)(2), and 552.130 of the Government Code. The city must release the remaining information.[5]

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[3]The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

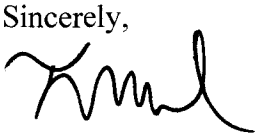
[4]Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

[5]We note the information being released contains the requestor's motor vehicle record information, which is subject to section 552.130 of the Government Code, as noted above. Because this section protects privacy, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). 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). Therefore, if the city receives another request for the same information from a person who would not have a right of access to the present requestor's motor vehicle record information, section 552.130(c) authorizes the city to redact this requestor's motor vehicle record information without requesting another ruling.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 544973

Enc. Submitted documents

c: Requestor
(w/o enclosures)