



May 30, 2002

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2002-2910

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163634.

The College Station Police Department (the “department”) received a request for fourteen categories of information regarding a specified police officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the Brazos County Attorney’s Office. *See* Gov’t Code § 552.304 (providing for submission of public comments).

Initially, we note that section 552.022 of the Government Code makes certain information expressly public, unless it is confidential under other law. One category of expressly public information under section 552.022 is “the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]” Gov’t Code § 552.022(a)(2). Although you claim that Exhibits C-62 through C-68 are excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code, these exceptions are discretionary exceptions to disclosure under the Public Information Act that do not constitute “other law” for purposes of section 552.022.¹ Accordingly, the department

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body’s position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111), 586 (1991) (governmental body may waive section 552.108) 522 at 4 (1989) (discretionary exceptions in general).

may not withhold Exhibits C-62 through C-68 from disclosure pursuant to sections 552.103 and 552.108 of the Government Code.

However, we note that section 552.117(2) excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the peace officer has family members. Therefore, the department must withhold the information we have marked under section 552.117(2) of the Government Code in Exhibits C-62 through C-68.

In regard to the remaining submitted information, section 552.108(a)(1) 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. You state that the release of the requested personnel file would interfere with the prosecution of a criminal case as the personnel file is that of the State's main witness in the criminal case. You claim that this information relates to the pending prosecution because "it is used at trial to determine the credibility of this witness, his competency to testify, and his qualification as an expert witness." Based on these representations, we find that release of the submitted personnel file would interfere with the detection, investigation, or prosecution of crime. *See, e.g.*, Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to incident). Therefore, we conclude that the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. As we are able to make this determination, we need not address your additional arguments.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 163634

Enc: Submitted documents

c: Mr. Jim W. James
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(w/o enclosures)