



July 11, 2002

Mr. Sim W. Goodall
Police Legal Advisor
Arlington Police Department
P.O Box 1065
Arlington, Texas 70064-1065

OR2002-3774

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165429.

The Arlington Police Department (the "department") received a request for letters, reports, memoranda, or other documents relating to the incomes, performance evaluations, complaints, and any investigations conducted regarding four named police officers. Although you state that certain radio and MDT records are not available in the requested form, we note that the requestor is not asking for this information. Therefore, this ruling does not address radio and MDT records. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You indicate that the department received this request for information on April 23, 2002. Therefore, under section 552.301 you were required to submit your request for a decision from this office, stating the exceptions that apply, by May 7, 2002. In your request for a decision submitted on May 7, 2002, you state that the information in question is excepted from disclosure under section 552.108 of the Government Code. Subsequently, we received the department's facsimile transmission of May 16, 2002, in which you raise section 552.103 as an additional exception to public disclosure. Section 552.103 is a discretionary exception that protects the governmental body's interests and may be waived. Open Records Decision Nos. 663 (1999). In this instance, as the department did not timely raise section 552.103, we determine that the department has waived that exception.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the officers in question were involved in an arrest, and that criminal charges are currently pending against the arrested person in Tarrant County criminal court. We note that the information in question, however, consists of personnel information regarding the named officers rather than police investigatory information. You do not explain, nor have we received comments from the prosecuting attorney explaining, how the submitted personnel records relate to the pending criminal investigation or prosecution. Thus, we determine the department may not withhold the records in Exhibit C under section 552.108(a)(1) of the Government Code.

We note that the submitted documents contain personal information regarding some of the named officers. Information that relates to the home address, home telephone number, or social security number of a peace officer¹, or that reveals whether a peace officer has family members, is excepted from disclosure under section 552.117(2) of the Government Code. We have marked the information that the department must withhold under section 552.117(2).

The submitted documents also contain photographs of some of the officers. A photograph that depicts a peace officer is excepted from public disclosure, unless 1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as

¹"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. It does not appear that any of the exceptions to section 552.119 apply. Furthermore, you have not informed us that any of the peace officers depicted in the requested photographs executed a written consent to disclosure of their pictures. Thus, the department must withhold the marked photographs under section 552.119, unless the department obtains written consent from the peace officers for their disclosure.

We also note that the submitted documents contain copies of the driver's licenses of some of the officers. Section 552.130 of the Government Code provides for the confidentiality of Texas driver's license information. The department must withhold the information we have marked pursuant to section 552.130.

In summary, we have marked the personal information pertaining to the named officers that the department must withhold pursuant to section 552.117(2) of the Government Code. Photographs of the officers must be withheld under section 552.119 of the Government Code. Driver's license information must be withheld under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 165429

Enc: Submitted documents

c: Ms. Mimi Coffey
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(w/o enclosures)