



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2005

Mr. Philip L. Cline
Special Prosecuting Attorney
Red River Valley Drug Task Force
P.O. Box 30620
Paris, Texas 75460-9991

OR2005-03757

Dear Mr. Cline:

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# 222160.

The Red River Valley Drug Task Force (the "task force") received a request for a "personnel file" and "a complete record of any and all information including, but not limited to, evaluations, disciplinary actions, accommodations, and personal notes. . ." relating to a named former task force officer. You claim that the requested 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.¹

Initially, you indicate that the information you have submitted as Exhibit 2 is not part of the requested personnel file. We therefore find that Exhibit 2 is not responsive to the present request and need not be released.

We next note that the submitted information includes the personal information of task force officers. Section 552.117(a)(2) excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a

¹Pursuant to section 552.303(c) of the Government Code, this office notified you via facsimile on April 15, 2005, that additional information was needed in order to clarify the manner and extent to which release of some of the requested information would interfere with law enforcement or prosecution. In addition, this office asked you to indicate whether special circumstances exist that warrant withholding the identities of officers assigned to the task force. We requested that the additional information be provided to our office within seven calendar days of the date the notice was received. See Gov't Code § 552.303(d). As of the date of this letter, we have not received your response.

peace officer as defined by article 2.12 of the Code of Criminal Procedure.² See Open Records Decision No. 622 (1994). The task force must, therefore, withhold those portions of the submitted documents that reveal a peace officer's personal information pursuant to section 552.117(a)(2). We have marked this information accordingly. We note, however, that section 552.117(a)(2) deems social security numbers confidential only in order to protect the privacy of peace officers. In this case, the requestor has a special right of access pursuant to section 552.023 of the Government Code to information that is otherwise excepted from disclosure to the public, because the information pertains to the requestor. Gov't Code § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Thus, the task force must release the officer's social security number to the requestor.³

We also note that the submitted information includes credit card numbers that are excepted from public disclosure under section 552.136 of the Government Code. This section states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The task force must, therefore, withhold the marked credit card numbers under section 552.136.

You assert that the list of peace officer names in the submitted information should be withheld under section 552.108(b) which provides:

(b) An 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 is excepted from the requirements of Section 552.021 if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication

²The Office of the Attorney General will raise mandatory exceptions like sections 552.117 and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note, however, that the submitted documents contain information that is confidential with respect to the general public. See Gov't Code § 552.023 (person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Thus, in the event the task force receives another request for this information, the task force must ask this office for a decision whether the information is subject to public disclosure.

Gov't Code § 552.108(b). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(b) may be applicable to internal records of a law enforcement agency, provided the law enforcement agency reasonably explains how and why release of the information at issue would interfere with law enforcement or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) exception 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 law enforcement efforts). In all cases, a governmental body seeking to withhold information pursuant to section 552.108 must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor).

In this case, you have not explained how release of the submitted information would interfere with “the detection, investigation, or prosecution of crime” or with “law enforcement or prosecution” in general. Thus, we find you have failed to establish that section 552.108 is applicable to the submitted information. We therefore determine that the task force may not withhold any portion of the submitted information pursuant to section 552.108 of the Government Code. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In summary, the marked personal information of peace officers must be withheld under section 552.117(a)(2) of the Government Code. The credit card numbers that we have marked must be withheld under section 552.136. The remaining responsive 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep't of Pub. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 222160

Enc. Submitted documents

c: requestor
(w/o enclosures)