ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2006

Ms. June Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street, #300A
Dallas, Texas 75215-1801

OR2006-07280

Dear Ms. Middlebrooks:

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# 253336.

The Dallas Police Department (the "department") received a request for five specified internal affairs investigations. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[1]

Initially, we note that in the present request, the requestor states that she is not requesting the officer's private information, including "social security information, health information, family information, and home address." Accordingly, some of the submitted information is not responsive to the request as this information is specifically excluded from the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to the request for information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd).

Next, we note that a portion of the information at issue in the present request was the subject of a prior ruling of this office, issued as Open Records Letter No. 2006-07018 (2006) on

[1]We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

June 30, 2006. *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We understand that the pertinent facts and circumstances have not changed since the issuance of Open Records Letter No. 2006-07018. Thus, we determine the department must rely on that ruling as a previous determination for the information we have marked.

We now address your arguments for the remaining submitted information. Section 552.108(a) 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 how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the information at issue relates to a pending criminal investigation. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the information you have marked in the remaining documents under section 552.108(a)(1).

Section 552.117(a)(2) excepts from disclosure the present and former home addresses and personal telephone numbers, social security number, and family member information of a peace officer regardless of whether the officer requests confidentiality for that information under section 552.024 of the Government Code.[2] Gov't Code § 552.117(a)(2). We note, however, that the protections of section 552.117 of the Government Code only apply to information that the governmental body holds in its capacity as an employer. *See id.* § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also id.* § 552.024 (establishing election process for section 552.117). In this instance, some of the information at issue is in the submitted offense report. As such, the peace officer's personal information included in the offense report may not be withheld under section 552.117(a)(2). However, this information may be excepted under section 552.1175 of the Government Code, which provides in part as follows:

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[2]"Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

> (b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:
>
> > (1) chooses to restrict public access to the information; and
> >
> > (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). If the peace officer at issue notifies the department that he chooses to keep the information we have marked confidential in accordance with section 552.1175(b), the department must withhold this information pursuant to section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We agree that the Texas driver's license and motor vehicle information you have marked in the remaining documents must be withheld under section 552.130. We have marked additional information that must also be withheld under section 552.130.

Section 552.136 of the Government Code provides in relevant part:

> (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:
>
> > (1) obtain money, goods, services, or another thing of value; or
> >
> > (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.
>
> (b) Notwithstanding 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. We agree that the access device number you have marked must be withheld pursuant to section 552.136.

We note that the submitted information contains a social security number. Section 552.147 of the Government Code[3] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. The department must withhold the social security number we have marked under section 552.147.[4]

In summary, the department must rely on Open Records Letter No. 2006-07018 (2006) as a previous determination for the information we have marked. The department may withhold the information you marked in the remaining documents under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked pursuant to section 552.1175 of the Government Code if the peace officer elects to restrict access to the information in accordance with section 552.1175(b). The department must withhold the information you have marked in the remaining documents under sections 552.130 and 552.136 of the Government Code. The department must also withhold the information we have marked under sections 552.130 and 552.147 of the Government Code. The remaining information must be released to the requestor. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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

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[3]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

[4]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

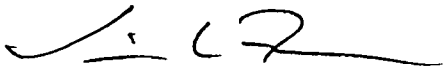
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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 Office of the Attorney General 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. 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 253336

Enc. Submitted documents

c: Ms. Tanya Eiserer
Dallas Morning News
508 Young Street
Dallas, Texas 75202
(w/o enclosures)