



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 14, 2006

Mr. Jason L. Mathis  
Cowles & Thompson, P.C.  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3793

OR2006-09200

Dear Mr. Mathis:

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# 256480.

The Addison Police Department (the "department"), which you represent, received a request for disciplinary or counseling actions for the past five years for two named police officers. You state that "[s]ome of the documents and items that Mr. Kennedy has requested do not exist."<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.*

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<sup>1</sup>We note that it is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *see also* Attorney General Opinion H-90 (1973); Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975).

§ 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that this exception 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 v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *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).

You state “all of the information requested is the subject of a pending criminal investigation and possible pending prosecution[.]” Based on your representations, we conclude that section 552.108(a)(1) is applicable to some of the submitted information, which we have marked. 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). However, the remaining information relates to internal investigations that are purely administrative in nature. You have not demonstrated that the release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, the department may not withhold the remaining information under section 552.108.

Furthermore, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including detailed descriptions of the offenses, even if this information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Other than basic information the department may withhold the information we have marked under section 552.108(a)(1) of the Government Code.

The social security number of an arrestee, although not excepted from disclosure under section 552.108, is excepted under section 552.147 of the Government Code. Section 552.147 provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department must withhold the social security numbers contained in the basic information under section 552.147.<sup>2</sup>

The department asserts that the remaining information is excepted under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, you do not cite to any specific law, and we are not aware of any, that

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<sup>2</sup>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.

makes any portion of the submitted information confidential under section 552.101. *See generally* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to public). Therefore, we conclude that the department may not withhold any portion of the remaining information under section 552.101 of the Government Code.

Last, we note that you also claim that portions of the remaining information are excepted from disclosure under section 552.111 of the Government Code; yet, you have not submitted written comments stating why this exception applies to the remaining information. *See* Gov't Code § 552.301(e)(1)(A). Thus, we have no basis to conclude that the remaining information warrants protection from required public disclosure under section 552.111. Accordingly, none of the remaining information may be withheld under section 552.111.

In summary, other than basic information, the information we have marked may be withheld under section 552.108(a)(1) of the Government Code. The arrestees' social security numbers must be withheld under section 552.147 of the Government Code. The remaining submitted 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); *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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/dh

Ref: ID# 256480

Enc. Submitted documents

c: Mr. Richard Kennedy  
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(w/o enclosures)