



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2009

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-00841

Dear Ms. McClellan:

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# 332609 (DPD# 2008-7481).

The Dallas Police Department (the "department") received a request for all correspondence between two named individuals on their city e-mail accounts during a specified time period. You claim that parts of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

¹We 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.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

Gov't Code § 552.108(a)(1). 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 id.* §§ 552.108 (a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d706 (Tex. 1977). You have marked the information that the department seeks to withhold under section 552.108. You state that some of the marked information relates to current criminal investigations and that release of the information would jeopardize the investigations. Based on 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. App.–Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 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 that concerns current investigations under section 552.108(a)(1) of the Government Code.²

You also claim that the cellular telephone numbers of police officers, which you have marked, are excepted from disclosure under section 552.108(b)(1). Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov't Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.–Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” *Id.* at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* You inform us that the cellular telephone numbers at issue consist of “internal mobile telephone and/or pager numbers used by [department] officers while in the field.” You assert that the release of the cellular telephone numbers at issue would interfere with law enforcement and crime prevention. Based on your representations and our review of the information at issue, we

²As our ruling is dispositive for this information, we need not address your arguments under section 552.101 of the Government Code.

conclude that the department may withhold the officer's cellular telephone numbers you have marked under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure. We understand that the information you have marked under this section relates to officers employed by the department. Upon review, we agree that the information you have marked must be withheld under section 552.117(a)(2).³

We note that the submitted information contains a license plate number.⁴ 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. Accordingly, you must withhold the license plate number we have marked pursuant to section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). We note section 552.137 is not applicable to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. Therefore, with the exception of the e-mail address we have marked for release, you must withhold the e-mail addresses you have marked in accordance with section 552.137, unless the department receives consent for their release.

In summary, the department may withhold the information you have marked that concerns current investigations under section 552.108(a)(1) of the Government Code and may

³This office has issued a previous determination allowing all governmental bodies to redact certain personal information of peace officers under section 552.117(a)(2) of the Government Code. *See* Open Records Decision No. 670 (2001) (previous determination that governmental body may withhold home address, home telephone number, personal cellular telephone number, personal pager number, social security number and information that reveals whether individual has family members, of any individual who meets definition of "peace officer" set forth in article 2.12 of the Texas Code of Criminal Procedure without necessity of requesting attorney general decision as to whether exception under section 552.117(a)(2) applies).

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but will ordinarily not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the officer's cellular telephone numbers you have marked under section 552.108(b)(1) of the Government Code. The department must withhold the personal information you have marked under section 552.117 of the Government Code. The department must withhold the license plate number we have marked under section 552.130 of the Government Code, and, except where we have marked for release, the department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code. The remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 332609

Enc. Submitted documents

c: Requestor
(w/o enclosures)