



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102-6312

OR2009-05202

Dear Mr. Phillips:

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# 340257 (Fort Worth Request No. 1604-09).

The Fort Worth Police Department (the "department") received a request for all police reports from October 7, 2005 to the present regarding a specified address. You state that most of the requested information is being released to the requestor. You also state that you have redacted certain Texas motor vehicle record information pursuant to the previous determinations issued in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). In addition, you state that you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that incident report 08-14816 is responsive to a previous request for information in response to which we issued Open Records Letter No. 2008-12485 (2008);

¹Section 552.147(b) 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.

however this report was not submitted for our review at the time we issued that ruling. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(a), (b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, we find that the department failed to comply with the procedural requirements of section 552.301 with regards to incident report 08-14816.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold this report under section 552.108 of the Government Code. As you raise no further exceptions against the disclosure of incident report number 08-14816, it must be released.

Next, we note that incident reports 08-78725 and 08-45072 in Exhibit D were the subject of the same previous request for information noted above, which we addressed in Open Records Letter No. 2008-12485 (2008). We also note that incident report 06-75649, Exhibit F, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-09431 (2008). As we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, the department may continue to rely on these rulings as previous determinations and withhold and/or release these incident reports in accordance with Open Records Letter Nos. 2008-12485 and 2008-09431. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on

which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will now address your arguments for the remaining information at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information must be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." See Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* We determine whether a request for information presents such "special circumstances" on a case-by-case basis. *Id.* at 7.

In this instance, the department seeks to withhold the names of the investigating officers, who are also undercover officers, in incident report 07-45780, Exhibit E, under section 552.101 of the Government Code. You inform us that release of the highlighted information, which identifies the undercover officers, would not only compromise the effectiveness of these individuals as undercover officers, but would likely cause the officers to face imminent threat of physical danger. Based on these representations and our review, we agree that the department must withhold the highlighted information in report number 07-45780 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You claim that the incident reports in Exhibits C and D are excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in pertinent 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:

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

Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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.2d 706 (Tex. 1977). You state, and provide affidavits showing, that incident reports 08-102471, 07-82485, and 08-45071 in Exhibit C relate to pending criminal prosecutions with the Tarrant County District Attorney's Office. You further state, and provide affidavits showing, that incident reports 07-148279 and 07-83235 in Exhibit D relate to pending criminal investigations being conducted by the department. Based upon your representations and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to incident reports 08-102471, 07-82485, 08-45071, 07-148279 and 07-83235. 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, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. See Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You indicate that the department seeks to withhold the identity of the informant in one of the submitted incident reports. We note that basic information does not include the identification and description of witnesses; therefore the department may withhold the informant's identity in this instance under section 552.108(a)(1). See *Houston Chronicle*, 531 S.W.2d at 187; ORD 127 at 3-4. Thus, with the exception of basic information, the department may withhold incident reports 08-102471, 07-82485, 08-45071, 07-148279 and 07-83235 under section 552.108(a)(1) of the Government Code.

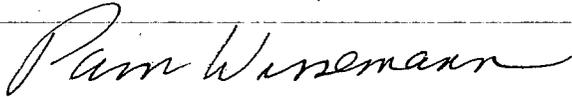
In summary, the department may continue to rely on our rulings in Open Records Letter Nos. 2008-12485 and 2008-09431 as previous determinations and dispose of incident reports 08-78725, 08-45072, and 06-75649 in accordance with these decisions. With the exception of basic information, the department may withhold incident reports 08-102471, 07-82485, 08-45071, 07-148279, and 07-83235 pursuant to section 552.108 of the Government Code. The department must withhold the marked identifying information of the undercover officers in incident report 07-45780 under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

A handwritten signature in cursive script that reads "Pam Wissemann".

Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/sdk

Ref: ID# 340257

Enc. Submitted documents

c: Requestor
(w/o enclosures)