



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2009

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

OR2009-05521

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# 340898 (DPD No. 2009-0892).

The Dallas Police Department (the "department") received a request for information pertaining to a named officer, as well as information pertaining to open positions and a named individual. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that you have only submitted a representative sample of information pertaining to the named officer for our review. We assume that, to the extent information responsive to the remaining portions of the request existed when the department received the request for information, you have released it to the requestor. If not, then you must do so at

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

this time. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

Section 552.108(a)(1) 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 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.2d 706 (Tex. 1977). You have marked the information the department seeks to withhold under section 552.108. We note that some of the marked information is related to an internal affairs investigation. Section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to Gov't Code § 552.108). In this instance, you state that the marked information pertains to pending criminal investigations. Based upon this representation, we conclude 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). Accordingly, the information you have marked may be withheld pursuant to section 552.108(a)(1) of the Government Code.²

Next, we address your arguments under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requests confidentiality for that information under section 552.024.³ Upon review, we agree that the department must withhold the personal information pertaining to a peace officer, which you have marked, and the information we have marked, under section 552.117(a)(2) of the Government Code.

In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked, and the information we have marked, under section 552.117 of the Government Code. The remaining information must be released.

²As our ruling on this information is dispositive, we need not address your remaining arguments against disclosure of this information.

³“Peace Officer” is defined by article 2.12 of the Code of Criminal Procedure.

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 340898

Enc. Submitted documents

cc: Requestor
(w/o enclosures)