



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 3, 2009

Ms. Jenny Gravley  
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2009-12454

Dear Ms. Gravley:

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# 356916.

The Southlake Department of Public Safety (the "department"), which you represent, received a request for copies of: 1) a named individual's cellular telephone bill or call record on a specified date between specified times; 2) a named individual's daily activity log, dispatch record, and notes for a specified date; 3) two named individuals' current job descriptions; 4) a named individual's cellular telephone bill, call log, or records on two specified dates between specified times; 5) radio traffic audio on a specified date between specified times; and 6) any and all reports and memos written by a named individual on a specified date. You state that information responsive to the requests for copies of a named individual's daily activity log, dispatch record, and notes for a specified date, two named individuals' current job descriptions, and any and all reports and memos written by a named individual on a specified date will be provided to the requestor. You state that there is no information responsive to the requests for copies of a named individual's cellular telephone bill or call record on a specified date between specified times and radio traffic audio on a specified date between specified times.<sup>1</sup> You claim that the submitted information is

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law enforcement agency that is 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." 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* Gov't Code § 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). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You seek to withhold the entire cellular telephone record of the chief of police arguing that revealing to whom and when calls are made "could reveal the numbers of confidential informants or witnesses in pending criminal cases interfering with both law enforcement and crime prevention." Although you make these general assertions, you do not identify the telephone numbers at issue or specifically explain how the release of the entire cellular telephone record would interfere with law enforcement or crime prevention. Therefore, you have failed to demonstrate how subsection 552.108(b)(1) is applicable to the entire cellular telephone record. You also state that two of the telephone numbers, which you have highlighted in pink, belong to department employees. You assert that releasing these telephone numbers to the public would interfere with law enforcement and crime prevention because the release of this information could make it more difficult for these employees to be reached in an emergency or when needed for official law enforcement business. In Open Records Decision No. 506 (1998), this office concluded that cellular telephone numbers for individuals with specific law enforcement responsibilities may be withheld under section 552.108. ORD 506 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.* Thus, we agree that release of the information at issue would interfere with law enforcement. Therefore, the department may withhold the information you have highlighted in pink pursuant to section 552.108(b)(1).

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Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and the family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). You assert that the information you have highlighted in blue reveals the family member information of a peace officer. Accordingly, the department must withhold the information you have highlighted in blue pursuant to section 552.117(a)(2).

In summary, the department may withhold the information you have highlighted in pink under section 552.108 of the Government Code. The department must withhold the information you have highlighted in blue under section 552.117 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](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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 356916

Enc. Submitted documents

c: Requestor  
(w/o enclosures)