



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 13, 2009

Ms. Camila Kunau  
Assistant City Attorney  
Office of the City Attorney  
P.O. Box 839966  
San Antonio, Texas 78283

OR2009-14428

Dear Ms. Kunau:

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# 358122 (COSA ID# 09-0910).

The City of San Antonio (the "city") received a request for the civil service file of a named city police officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has agreed to exclude social security numbers and home addresses from her request. Thus, such information is not responsive to the present request for information. The city need not release non-responsive information in response to this request, and this ruling will not address that 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: (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 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). The information you seek to withhold under section 552.108 includes an internal affairs investigation conducted by the city's police department. Section 552.108 is generally not applicable to information relating to 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) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or

prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you explain the submitted information relates to a pending criminal investigation and prosecution. You have also provided a statement from the Bexar County Criminal District Attorney's Office objecting to the release of any documentation in the city's files relating to the pending prosecution because release would interfere with the prosecution. We note the submitted information includes a citation. Because the citation has been provided to the individual who was cited, we find release of this information will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the citation, which we have marked, under section 552.108(a)(1). Based upon these representations and our review, we conclude release of the remaining submitted 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).

We note 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic information and the marked citation, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

We note the submitted citation contains information subject to section 552.1175 of the Government Code.<sup>1</sup> Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). *See, e.g.*, Open Records Decision No. 678 (2003) (ruling that confidentiality of information subject to section 552.1175 is dependent on a governmental

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

body's receipt of an election of confidentiality from the individual whose information is at issue). Thus, to the extent the peace officer at issue elects to restrict access to the information we have marked in accordance with section 552.1175(b), the city must withhold this information under section 552.1175. If the city does not receive the appropriate election, this information may not be withheld under section 552.1175.

The submitted citation also includes information subject to section 552.130 of the Government Code. 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, the city must withhold the Texas motor vehicle record information you have marked, as well as the information we have marked, in the submitted citation pursuant to section 552.130 of the Government Code.<sup>2</sup>

In summary, with the exception of basic information and the submitted citation, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. If the officer at issue elects to restrict access to the information we have marked, it must be withheld under section 552.1175 of the Government Code. The marked Texas motor vehicle record information in the citation must be withheld pursuant to section 552.130 of the Government Code. The remaining information in the citation 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,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/cc

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

Ref: ID# 358122

Enc. Submitted documents

c: Requestor  
(w/o enclosures)