



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2009

Mr. Rob Atherton
City Attorney
City of Nacogdoches
P.O. Drawer 631248
Nacogdoches, Texas 75963-1248

OR2009-18001

Dear Mr. Atherton:

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# 365243.

The City of Nacogdoches (the "city") received two requests from the same requestor for all information regarding disciplinary actions involving a named Nacogdoches police officer in the five years prior to the request. You state you have released some information to the requestor. You claim that the remaining requested information is 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(a)(2) 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 ... it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have submitted information pertaining to two separate incidents. You inform us, and have provided a letter

from the Nacogdoches County Sheriff's Office advising, that one of the incidents relates to a concluded criminal investigation in which prosecution is not being pursued. Therefore, we agree section 552.108(a)(2) is applicable to the information related to incident no. S09006878. However, you have failed to provide any arguments with respect to incident no. 8006797. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Accordingly, we conclude incident no. 8006797 may not be withheld under section 552.108(a)(2).

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 Publishing 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), and includes a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). You argue that section "552.108(c) does not apply since there was no arrest or crime charged." The application of section 552.108(c) is not dependent upon an arrest or criminal charge. Thus, with the exception of basic information, the city may withhold the information related to incident no. S09006878 under section 552.108(a)(2) of the Government Code.

You also raise section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code.¹ Gov't Code § 552.117(a)(2). We note that an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added). We further note that section 552.117(a)(2) is not applicable to a former spouse or the fact that a peace officer has been divorced. We agree that the basic information in the report for incident no. S09006878 and the information in the report for case no. 8006797 include some personal information of a peace officer employed by the city. Accordingly, the city must withhold the personal information of the officer, which we have marked, pursuant to section 552.117(a)(2).

We note the report for case no. 8006797 includes a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle record issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Therefore,

¹ "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

the city must withhold the driver's license number we have marked under section 552.130 of the Government Code.²

In summary, except for basic information, the city may withhold the information pertaining to incident no. S09006878 under section 552.108(a)(2) of the Government Code. The city must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code. The city must withhold the driver's license number we have marked under section 552.130 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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 365243

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.