



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2010

Mr. Ramon G. Viada III
Viada & Strayer
For City of Jersey Village
17 Swallow Tail Court, Suite 100
The Woodlands, Texas 77381

OR2010-01616

Dear Mr. Viada:

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# 369041.

The City of Jersey Village (the "city"), which you represent, received a request for internal investigation reports related to named officers, termination or resignation documents relating to named officers, documents relating to disciplinary measures taken toward named officers, documents relating to appeals of any employment action by named officers, e-mails received or written by named officers during the past six months, and documents received from the Harris County District Attorney's Office for Public Integrity relating to named officers. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to three internal affairs investigations for our review. We assume, to the extent information responsive to the remaining portions of the request existed when the city received the request for information, you have released it to the requestor. If not, then you must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

Next, we note the submitted information consists of three internal affairs investigations, which are subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the submitted internal affairs investigations under section 552.103. As you raise no further exceptions to disclosure for one of the investigations, which you have labeled Item 3, it must be released to the requestor. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, which you raise for the two remaining investigations, we will address this exception for these investigations.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

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

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would

interfere with on-going law enforcement and prosecution efforts in general. The information you seek to withhold under section 552.108 consists of two internal affairs investigations. 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). You state these two investigations relate to pending investigations by the Harris County District Attorney. You assert that in one of the investigations, the officer involved has been charged with theft. You state that release of this information would interfere with the investigation and prosecution of this case. Upon review, we find that section 552.108(a)(1) is applicable to one of the remaining internal affairs investigations, which you have labeled Item 1. *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). The other remaining investigation, which you have labeled Item 2, relates to violations of city police department rules. You have not explained how the information in Item 2 is related to a criminal investigation. We find you have failed to show that release of this remaining investigation would interfere with the detection, investigation, or prosecution of crime. Therefore, none of Item 2 may be withheld under section 552.108(a)(1). We also find you have failed to show that release of this remaining investigation would interfere with law enforcement or prosecution. Therefore, none of Item 2 may be withheld under section 552.108(b)(1).

Additionally, section 552.108 does not except 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 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold Item 1 under section 552.108(a)(1).

We note Item 2 contains information subject to section 552.117 of the Government Code.¹ Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.² *See* Gov't Code § 552.117(a)(2). We note that section 552.117

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

²Section 552.117(a)(2) applies to a "peace officer" as defined by article 2.12 of the Code of Criminal Procedure.

also encompasses personal cellular telephone numbers, provided that the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). The city must withhold the information we have marked under section 552.117(a)(2), including the marked cellular telephone number provided that the officer at issue paid for the service with his own funds.

Item 2 also contains information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information related 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. *See* Gov't Code § 552.130(a)(1), (2). We have marked a Texas driver's license number that must be withheld under section 552.130 of the Government Code.³

Item 2 also contains information subject to section 552.136 of the Government Code. Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, the city must withhold the cellular telephone account number, which we have marked, pursuant to section 552.136.

In summary, with the exception of basic information, the city may withhold Item 1 under section 552.108(a)(1). The city must withhold the information we have marked under section 552.117 of the Government Code. The city must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code. The city must withhold the cellular telephone account number we have marked under section 552.136 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

³We 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 Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 369041

Enc. Submitted documents

c: Requestor
(w/o enclosures)