



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

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

OR2011-06245

Dear Ms. McClellan:

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# 416490 (ORR# 2011-01250).

The Dallas Police Department (the "department") received requests for all records related to report number 2010-413 concerning a named individual, and all records related to report number 2010-414 concerning a named officer. You claim the submitted internal affairs investigation is excepted from disclosure under sections 552.108 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the request for all records related to report number 2010-413. To the extent information responsive to this request existed on the date the department received the request, we assume you have released it. If you have not released any such information, you must do so at this time. 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).

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[.]" *Id.* § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why 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). Section 552.108 is generally not applicable to records of an internal affairs investigation that is purely

administrative in nature and did not involve the criminal investigation or prosecution of an officer's alleged misconduct. *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 City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer). In this instance, you state only that the internal affairs investigation pertains to a pending case. The records reflect that this investigation was an internal administrative investigation of the named officer. You make no representation that the pending case involves a criminal investigation or prosecution of the officer. Furthermore, you have not explained how releasing the internal affairs investigation would otherwise interfere with the detection, investigation, or prosecution of crime. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(1) to the internal affairs investigation.

The internal affairs investigation contains the birth dates of certain officers. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).¹ The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). We have marked the birth dates that must be withheld under section 552.102(a) of the Government Code.

The remaining information contains Texas driver’s license numbers, Texas license plate numbers and years, and Texas vehicle identification numbers. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2).² Therefore, the department must withhold the Texas driver’s license and Texas motor vehicle record information we marked under section 552.130 of the Government Code.

The remaining information also includes an employee identification number you marked pursuant to section 552.136 of the Government Code. This section provides “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental

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).

²We note this office 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 and a Texas license plate number under section 552.130, without the necessity of requesting an attorney general decision.

body is confidential.” *Id.* § 552.136(b); *see id* § 552.136(a) (defining “access device”). You inform us an employee’s identification number is used in conjunction with one additional digit to access the employee’s credit union account. Thus, we find the department must withhold the marked employee identification number under section 552.136 of the Government Code. The remaining information must be released.

In summary, the marked birth dates must be withheld under section 552.102(a) of the Government Code. The marked Texas driver’s license and Texas motor vehicle record information must be withheld under section 552.130 of the Government Code. The marked employee identification number must be withheld 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 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 416490

Enc. Submitted documents

c: Requestor
(w/o enclosures)