



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2012

Ms. Julia Gannaway
Lynn, Pham & Ross, L.L.P.
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2012-04544

Dear Ms. Gannaway:

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# 449116.

The Waxahachie Police Department (the "department"), which you represent, received a request for nine categories of information pertaining to a named officer and all general orders, codes of conduct, or other directives regarding officers failing to honor a subpoena or routing slip. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the requests for the named officer's duty assignments and off duty jobs. To the extent information regarding

¹We note the department did not raise sections 552.102 or 552.117 of the Government Code as exceptions to disclosure within ten business days of the date the department received the request. *See* Gov't Code §§ 552.301(b), .302. However, because sections 552.102 and 552.117 are mandatory exceptions that can provide compelling reasons to withhold information from disclosure, we will consider your claims under sections 552.102 and 552.117, notwithstanding the department's violation of section 552.301(b) in raising those exceptions. *See id.* § 552.302.

these portions of the request existed on the date the department received this request, we assume you have released it. If you have not released any such information, 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).

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked in the submitted incident report relates to an active case, and the Ellis County District Attorney's Office objects to the release of this information because its release would interfere with the investigation and prosecution of crime. You further state the submitted personnel information pertains to an officer who is a witness in this case, and assert the information could be used to impeach the credibility of the officer's testimony at trial. Based on your representation and our review of the information, we conclude release of the submitted personnel information and the information you have marked in the submitted incident report would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code generally applies to the submitted personnel information and the information you have marked in the submitted incident report.

We note, however, 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). Section 552.108(c) refers to the basic “front page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information includes, among other things, a detailed description of the offense. *See id.* at 179-80, 185-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note you wish to withhold the entire narrative portion of the submitted incident report under section 552.108. However, the remaining information does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See* ORD 127. Therefore, the department may withhold the submitted

personnel information and, with the exception of a detailed description of the offense, the information you have marked in the submitted incident report under section 552.108(a)(1).²

You seek to withhold some of the remaining information in the submitted incident report under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state, or another state or country. Gov't Code § 552.130(a)(1)-(2). However, we note this exception protects personal privacy. In this instance, the requestor is the authorized representative of the individual listed in the submitted incident report. Therefore, the requestor has a right of access under section 552.023 of the Government Code to his client's motor vehicle record information, and the department may not withhold that information under section 552.130 of the Government Code. *See generally id.* § 552.023; Open Records Decision No. 481 at 4 (1987).

You seek to withhold some of the remaining information in the submitted incident report under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). We note, however, the requestor has a right of access to his client's own social security number. *See generally id.* § 552.023(a). Accordingly, the department may not withhold the social security number you have marked from this requestor under section 552.147 of the Government Code.

In summary, the department may withhold the submitted personnel information and, with the exception of a detailed description of the offense, the information you have marked in the submitted incident report under section 552.108(a)(1) of the Government Code. The department must release the remaining information.³

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.

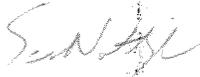
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³We note some of the information being released contains information to which the requestor has a special right of access. *See* Gov't Code § 552.023(a). Because the requestor has a right of access to this information that would be confidential with respect to the general public, if the department receives another request for this information from someone other than this requestor or his client, the department must again seek a ruling from this office.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/ag

Ref: ID# 449116

Enc. Submitted documents

c: Requestor
(w/o enclosures)