



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2013

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

OR2013-05844

Dear Ms. Middlebrooks:

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# 483648 (DPD PIR # 2013-01038).

The Dallas Police Department (the "department") received a request for information pertaining to a specified public integrity investigation involving a named department officer. You claim the submitted information is excepted from disclosure under sections 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-17561 (2012). In Open Records Letter No. 2012-17561, we ruled the department may withhold the information the department marked under section 552.108 of the Government Code and must release the remaining information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code for the submitted information that may have been at issue in the previous ruling, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision No. 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, to the extent any portion of the submitted information was previously released in accordance with Open Records Letter No. 2012-17561, the department may not now withhold such information under section 552.108. As we have no indication the law, facts, and circumstances on which Open Records Letter No. 2012-17561 was based have changed, the department may continue to rely on that ruling as a previous determination and withhold or release any identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not identical to information that was subject to Open Records Letter No. 2012-17561, we will consider your arguments under sections 552.108, 552.117, and 552.136 of the Government Code.

Section 552.108(a) 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). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the submitted information consists of an internal affairs investigation. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *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 state the submitted information relates to a pending criminal investigation with the department's Public Integrity Unit and its release would jeopardize the criminal investigation. Based on these representations and our review, we conclude release of the information at issue 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

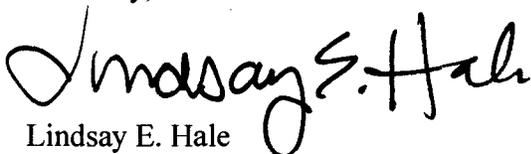
We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense information, the department may withhold any remaining information at issue under section 552.108(a)(1) of the Government Code.<sup>2</sup>

In summary, the department may continue to rely on Open Records Letter No. 2012-17561 as a previous determination and withhold or release any identical responsive information in accordance with that ruling. With the exception of the basic information, which must be released, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

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

Ref: ID# 483648

Enc. Submitted documents

c: Requestor  
(w/o enclosures)