



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2013

Ms. Elizabeth Guerrero-Southard
Counsel for the Live Oak Police Department
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2013-19079

Dear Ms. Guerrero-Southard:

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# 504701.

The Live Oak Police Department (the "department"), which you represent, received a request for video recordings for a specified arrest and subsequent detention of a named individual and the names and badge numbers of officers involved in a specified incident. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note you have submitted information that does not consist of video recordings or the names and badge numbers of officers. As the request is only for video recordings and the names and badge numbers of officers, the remaining information in Exhibit E is not

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

Section 552.108(a)(1) of the Government Code exempts 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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and 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). You state the responsive officer names in Exhibit E and the video in Exhibit F pertain to a pending criminal investigation. The requestor asserts section 552.108(a)(1) is not applicable to the submitted information because the case was dismissed on September 24, 2013. We note the Motion to Dismiss was filed after the department received the present request for information, thus the criminal prosecution for this case was pending on the date the department received the request. Based on your representation, we conclude section 552.108(a)(1) is generally applicable to the responsive information in Exhibit E and the video in Exhibit F. *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).

However, we note, 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; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the names of the arresting and investigating officers, even if the information does not literally appear on the front page of an offense or arrest report. ORD 127 at 3-4. Therefore, the department may not withhold the responsive officer names in Exhibit E. Accordingly, the responsive officer names in Exhibit E must be released. The department may withhold Exhibit F under section 552.108(a)(1) of the Government Code.²

²As our ruling is dispositive, we need not address the remaining arguments against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Paige Thompson". The signature is written in black ink and is positioned above the typed name.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 504701

Enc. Submitted documents

c: Requestor
(w/o enclosures)