



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2014

Ms. Jo-Christy Brown
Counsel for the City of Lampasas
Law Offices of JC Brown, PC
1411 West Avenue, Suite 100
Austin, Texas 78701

OR2014-06213

Dear Ms. Brown:

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# 519954.

The Lampasas Police Department (the "department"), which you represent, received a request for the requestor's personnel file, all paperwork relating to his termination, all documents relating to investigations for policy violations by the accuser, the statements of his accusers, awards given to the requestor, and information related to the department's pay scale. You state some information will be provided to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You generally claim the submitted information is subject to section 552.108 of the Government Code. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See* Gov't Code § 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). We note section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n 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." Gov't Code § 552.108(a), (b). Section

552.108 is generally not applicable to the 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 (Tex. 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).

The submitted information pertains to internal affairs investigations. Upon review of your arguments, we find you have failed to demonstrate how release of the submitted information would interfere with the detection, investigation, or prosecution of crime, or interfere with law enforcement or prosecution. Consequently, we find you have failed to demonstrate the applicability of section 552.108 to the responsive information, and we conclude the department may not withhold the submitted information on this basis.

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, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.¹ Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. To the extent the individuals whose information we have marked are currently licensed peace officers as defined by article 2.12, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

If the individuals whose information we have marked are not currently licensed peace officers, but are current or former department employees, section 552.117(a)(1) of the Government Code may apply to the information at issue. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. If the individuals whose information is at issue made timely elections under section 552.024, the department must withhold the information we have marked under section 552.117(a)(1). If the individuals whose information we have marked did not make

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

timely elections under section 552.024 this information may not be withheld under section 552.117(a)(1).

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, date of birth, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). Upon review, we find the department must withhold the information we have marked under section 552.1175 if the individual to whom this information pertains is a currently licensed peace officer, and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. However, the department may not withhold the information we have marked under section 552.1175 if the individual is not a currently licensed peace officer, or no election is made.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.²

In summary, to the extent the individuals whose information we have marked are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold the information we have indicated under section 552.117(a)(2) of the Government Code. If the individuals whose information we have marked are not currently licensed peace officers, but are current or former department employees, and they made timely elections under section 552.024 of the Government Code, the department must withhold the information we have indicated under section 552.117(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.1175 if the individual to whom this information pertains is a currently licensed peace officer, and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The department must withhold the driver's license information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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 black ink, appearing to read "Tim Neal". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 519954

Enc. Submitted documents

c: Requestor
(w/o enclosures)