



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2014

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

OR2014-06372

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# 519953.

The Lampasas Police Department (the "department"), which you represent, received a request for the requestor's personnel file and all statements regarding the requestor's resignation from the department. You state you will release some of the requested information. You claim some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.108(b)(1) of the Government Code excepts from disclosure "[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 . . . if . . . release of the internal

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 those records contain substantially different types of information than that submitted to this office.

record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques, but was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution); *but see* Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You inform us the information at issue pertains to an internal administrative investigation of two former department officers. You assert, and have provided an affidavit from the department’s assistant chief of police stating, the release of the identities of the officers and dispatcher who served as witnesses in the internal investigation would subject these individuals to possible intimidation or harassment. *See* Open Records Decision No. 297 (1981) (names and statements of witnesses may be withheld if disclosure might subject witnesses to possible intimidation or harassment or harm prospects of future cooperation between witnesses and law enforcement). However, upon review, we find you have failed to demonstrate the release of the information at issue would unduly interfere with law enforcement. Accordingly, the department may not withhold the identities of the witnesses you seek to withhold in the submitted information under section 552.108(b)(1) of the Government Code.

Some of the remaining information may be subject to sections 552.117 and 552.1175 of the Government Code.² Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* 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

²The 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).

Criminal Procedure. Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, then the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual whose information is at issue did not timely request confidentiality under section 552.024, then the department may not withhold the marked information under section 552.117(a)(1).

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, 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). Some of the remaining information, which we have marked, relates to a peace officer who is employed by another law enforcement agency. Accordingly, if the officer at issue elects to restrict access to his marked information in accordance with section 552.1175(b), then the department must withhold the marked information that pertains to that officer under section 552.1175 of the Government Code. Conversely, if the officer at issue does not elect to restrict access to his information in accordance with section 552.1175(b), the marked information pertaining to that officer may not be withheld under section 552.1175.

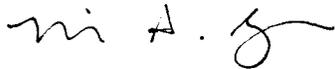
In summary, the department must withhold the information we have marked under (1) section 552.117(a)(2) of the Government Code; (2) section 552.117(a)(1) of the Government Code, if the individual at issue timely requested confidentiality under section 552.024 of the Government Code; and (3) section 552.1175 of the Government Code, if the peace officer at issue elects to restrict access to his marked information in accordance with section

552.1175(b) 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.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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 519953

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains information relating to the requestor that the department would ordinarily be required to withhold under section 552.117 of the Government Code. Because section 552.117 protects personal privacy, the requestor has a right of access to his own private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). We further note Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the personal information of currently licensed peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. *See* ORD 670 at 5-6. Accordingly, if the department receives another request for this information from another individual, and the requestor is still a licensed peace officer, the department may withhold the personal information relating to the requestor in the submitted information pursuant to section 552.117(a)(2) and Open Records Decision No. 670 without requesting another ruling.