



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2014

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

OR2014-13834

Dear Ms. Diaz:

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# 532471 (DPD ORR# 2014-2357).

The Dallas Police Department (the "department") received a request for any internal affairs records pertaining to a specified officer, as well as the related police report. You claim the requested information is excepted from disclosure under sections 552.102, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a) 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

¹We assume that 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.

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 information at issue 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 information at issue pertains to an ongoing criminal investigation of an alleged offense. Based upon your representation and our review, we conclude release of the information you have marked 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, the department may withhold the information you have marked under section 552.108(a)(1).

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Thus, under *Texas Comptroller* section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. In this instance, the date of birth you have marked is held by the department in a law enforcement context. Thus, we find the information at issue is not subject to section 552.102(a) of the Government Code, and the department may not withhold it on that basis.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of specified categories of individuals. *See* Gov’t Code § 552.117. We note, however, section 552.117 applies only to records that a governmental body is holding in an employment capacity. The information at issue is in a police report that is not held by the department in an employment capacity. Therefore, we find section 552.117 of the Government Code does not apply to the information you have marked, and the department may not withhold the information on that basis.

However, we note some of the information at issue may be excepted from disclosure under section 552.1175 of the Government Code.² 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. *Id.* § 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). The police report contains personal information of a peace officer that is held in a non-employment capacity and is subject to section 552.1175. Thus, to the extent the officer whose information is at issue is a currently licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175. If the peace officer whose information we have marked is no longer a licensed peace officer or no election is made, the department may not withhold the information we have marked under section 552.1175.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). We conclude the department must withhold the information you have marked under section 552.130.

Section 552.136(b) of the Government Code states “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). You state an employee identification number also serves as an access device number. Thus, the department must withhold the employee identification number you have marked under section 552.136 of the Government Code.

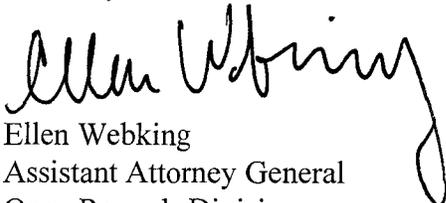
In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.1175 if the officer is a currently licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The department must withhold the information you have marked under section 552.130 of the Government Code. The department must withhold the employee identification number you have marked under section 552.136 of the Government Code. The remaining information must be released.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID# 532471

Enc. Submitted documents

c: Requestor
(w/o enclosures)