



January 23, 2015

Ms. J. Diaz
Ms. P. Armstrong
Assistant City Attorneys
Criminal Law and Police Section
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2015-01378

Dear Ms. Diaz and Ms. Armstrong:

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# 551138 (ORR#s 2014-11066 and 2014-12158).

The Dallas Police Department (the "department") received two requests from two separate requestors for all records pertaining to internal affairs control number 2014-199. You state the department has provided some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.139 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter

¹Although you raise section 552.136 of the Government Code, we note section 552.139 of the Government Code is the proper exception to raise for the type of information you seek to withhold.

²We 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.

No. 2014-18953 (2014). In that ruling, we concluded the department must withhold certain information under sections 552.101 in conjunction with common-law privacy, 552.130, and 552.137 of the Government Code, and must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on Open Records Letter No. 2014-18953 as a previous determination and withhold or release the previously ruled upon 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, you now seek to withhold the previously ruled upon information under sections 552.108 and 552.139 of the Government Code. Section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from 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, to the extent the information we previously ruled you must release is identical to the submitted information, the department may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential under law. Because section 552.108 does not prohibit the release of information or make information confidential, the department may not now withhold any previously released information under section 552.108. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). However, because section 552.139 makes information confidential by law, we will consider the applicability of this exception to the previously released information. Furthermore, we will consider your arguments against disclosure for the information not previously ruled upon in Open Records Letter No. 2014-18953.

Section 552.108(a)(1) 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 . . . 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). 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 seek to withhold the information you have marked under section 552.108(a)(1), and state the information at issue relates to a pending criminal investigation. Based on your representation, 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, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.³

Section 552.139 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). Section 2059.055 of the Government Code provides, in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency[.]

Id. § 2059.055(b)(1). We understand the user name you have marked in the submitted information can be used to access the department's internal computer network. Upon review, we find this user name relates to computer network security. Accordingly, the department must withhold the user name you have marked under section 552.139 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2014-18953 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. To the extent the submitted information was not previously ruled upon, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. In either case, the department must withhold

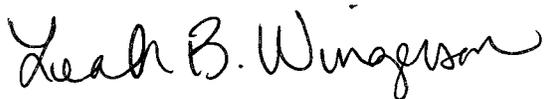
³As our ruling is dispositive, we need not address your remaining argument against disclosure for portions of this information.

the user name you have marked under section 552.139 of the Government Code. The department must release the remaining information.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 551138

Enc. Submitted documents

c: Requestors
(w/o enclosures)