



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2015

Lieutenant Russell Brown
Records Manager
City of Bellaire Police Department
5110 Jessamine
Bellaire, Texas 77401

OR2015-06477

Dear Lieutenant 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# 558627 (PIR OR 15-01).

The Bellaire Police Department (the "department") received a request for information pertaining to all incidents in which an officer of the department discharged a firearm resulting in injury or death to a human being, spanning from January 1, 2004 to the present. The department states it will release some information. The department informs us some information does not exist.¹ The department claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information. Initially, we note a portion of the submitted information, which we have marked, is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Thus, the completed investigation, which we have marked, is subject to section 552.022(a)(1). The department must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although the department raises section 552.103 of the Government Code for this information, section 552.103 is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, none of the information subject to section 552.022(a)(1) may be withheld under section 552.103. However, because information that is subject to section 552.022(a)(1) may be withheld under section 552.108, we will consider the department's argument to withhold this information under that section. We further note portions of the information subject to section 552.022 are subject to sections 552.1175 and 552.130 of the Government Code, both of which make information confidential under the Act.² Thus, we will address the applicability of these exceptions to the information at issue. Furthermore, we will consider the department's arguments under sections 552.103 and 552.108 for the information not subject to section 552.022.

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 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). The department states the information subject to section 552.022 relates to pending civil litigation. However, the the department has not explained how this information relates to an ongoing criminal investigation, or how its release would interfere with the detection, investigation, or prosecution of a particular crime. Thus, we find the department has failed to demonstrate the applicability of section 552.108(a)(1) to the information subject to section 552.022, and the department may not withhold any of it on that basis.

Additionally, we note section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open*

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, 480 (1987), 470.*

Records Decision No. 414 at 4-5 (1987). Where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The department states the remaining information, which pertains to report number 121224-1823, relates to a case that is pending appeal before the Texas Criminal Court of Appeals. *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). Further, the department also provided a statement from the Harris County District Attorney's Office (the "district attorney's office") stating this information relates to the pending appeal and release would interfere with the district attorney's office's case. Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to the information pertaining to report number 121224-1823.

We note that 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). Basic information refers to the 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). Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the submitted information pertaining to report number 121224-1823 under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.³

Section 552.1175 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. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Therefore, if the peace officers at issue elect to restrict access to their information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175. If the peace officers at issue do not elect to restrict access to their information, the department may not withhold this information.

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

³As our ruling is dispositive, we need not address the department's remaining argument against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

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 motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of the basic front-page offense and arrest information, the department may withhold report number 121224-1823 under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. If the peace officers at issue elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have marked under section 552.1175 of the Government Code. The department must withhold the information we have marked under 552.130 of the Government Code. The remaining information must be released.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 558627

Enc. Submitted documents

c: Requestor
(w/o enclosures)