



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2016

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

OR2016-16531

Dear 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# 619810 (ORR# 2016-09831).

The Dallas Police Department (the "department") received a request for internal affairs investigations for March and April of 2016. The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.136 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Section 552.108(a) 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: (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 explain how and why the release of the information at issue would interfere with law enforcement. *See id.*

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.

§§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of another law enforcement agency, the governmental body may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. However, 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 criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (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 City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency's personnel records); Open Records Decision No. 350 at 3-4 (1982).

The submitted information consists of internal affairs reports. Nevertheless, the department has submitted a representation from the City of Arlington objecting to the release of report number CN2016-067 because it pertains to a pending criminal matter. In addition, the department itself represents report numbers CN2016-063 and CN2016-074 also pertain to pending criminal investigations. Based on these representations, we conclude the release of these reports 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information the city has marked under that section in these reports. Therefore, the department may withhold report numbers CN2016-063, CN2016-067, and CN2016-074 under section 552.108(a)(1) of the Government Code.² However, the department does not inform us report number CN2016-071 has resulted in a criminal investigation or prosecution, and does not otherwise establish how release of the submitted information would interfere with law enforcement. Consequently, we find the department has failed to demonstrate the applicability of section 552.108(a)(1) to report number CN2016-071, and may not withhold it on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 or

²As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.

section 552.1175 of the Government Code.³ Gov't Code § 552.117(a)(2). The department must withhold the remaining information it has marked under section 552.117(a)(2) of the Government Code.

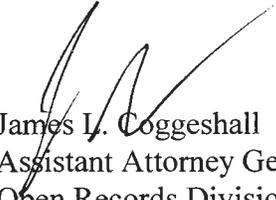
Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). The department states the employee numbers it has marked also serve as access device numbers. Accordingly, the department must withhold the identification numbers it has marked in the remaining information under section 552.136 of the Government Code.

To conclude, the department may withhold report numbers CN2016-063, CN2016-067, and CN2016-074 under section 552.108(a)(1) of the Government Code. The department must withhold the remaining information it has marked under sections 552.117(a)(2) and 552.136 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/dls

³“Peace officer” is defined by article 2.12 of the Texas Code of Criminal Procedure.

Ref: ID# 619810

Enc. Submitted documents

c: Requestor
(w/o enclosures)