



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2015

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2015-06249

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# 560427 (ORR# 2015-01734).

The Dallas Police Department (the "department") received a request for "[a]ll records including arrest warrants related to the arrest of [a named department police officer]." The department claims the submitted information is excepted from disclosure under sections 552.102, 552.108, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information¹

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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the

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.

release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to a pending "investigation/prosecution" and that its release "could hinder the criminal investigation and/or prosecution[.]" Based upon this representation, we conclude the release of the information you have marked under this exception 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). Therefore, we agree the department may withhold the information you have marked from disclosure based on section 552.108(a)(1).²

You claim the birth date in the remaining information is excepted from disclosure under the Act by section 552.102 of the Government Code. Section 552.102(a) 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). Under the *Texas Comptroller* decision, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by the employer in an employment context. We find the information you have marked under section 552.102 is held by the department in a law enforcement context. Therefore, we conclude the information you marked 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(a)(2) of the Government Code 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.³ *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 Criminal Procedure. We note section 552.117 only applies to information held by a governmental body in an employment context. We agree a portion of the information you have marked under section 552.117 is held in an employment context and must be withheld under this exception. Thus, the department must withhold the information we marked under section 552.117(a)(2). However, the remaining information you have marked under

²As our ruling is dispositive, we do not address your other argument to withhold this information.

³Although you raise section 552.117(a)(1) of the Government Code as an exception to disclosure of this information, we note section 552.117(a)(2) is the proper exception to raise when seeking to withhold information related to a peace officer. *See* Gov't Code § 552.117(a)(1)-(2).

section 552.117 is held by the department in a law enforcement context and may not be withheld under section 552.117.

Next, we note some of the remaining information may be subject to section 552.1175 of the Government Code.⁴ 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. 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). The submitted law enforcement records contain personal information of the named peace officer that is held in a non-employment capacity and is subject to section 552.1175. Thus, to the extent the named police officer is a currently licensed peace officer and elects to restrict access to her 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 552.1175.⁵

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a). The department must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 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." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). You inform us the employee

⁴The Office of the Attorney General will raise a mandatory exception like section 552.1175 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵Regardless of the applicability of section 552.1175, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code §552.147(b).

identification numbers you have marked consist of access device numbers for department employees. Upon review of the submitted information, we find these access device numbers must be withheld under section 552.136 of the Government Code.

In summary, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code. The department must withhold the information we marked under section 552.117(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.1175 of the Government Code if the individual to whom it pertains is a peace officer and elects to restrict access to the information in accordance with section 552.1175(b). The department must withhold the information marked under sections 552.130 and 552.136 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 560427

Enc. Submitted documents

c: Requestor
(w/o enclosures)