



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2017

Ms. Maria Jackson
City Secretary
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2017-02260

Dear Ms. Jackson:

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# 644046.

The Missouri City Police Department (the "department") received a request for the personnel file of a named peace officer. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a job description, which is usually open to the public as part of a job posting. Section 552.022(a)(15) of the Government Code provides for the required disclosure of "information regarded as open to the public under an agency's policies," unless it is made confidential under the Act or other law. *See* Gov't Code § 552.022(a)(15). If the department regards the submitted job description as open to the public, then that information is subject to section 552.022(a)(15). Although you argue this information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *See id.* § 552.007; *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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions

generally). Therefore, the submitted job description may not be withheld under either section 552.103 or section 552.108 pursuant to section 552.022(a)(15) if it is regarded by the department as open to the public.

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 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, 710 (Tex. 1977). In this instance, the requested information consists of personnel file records pertaining to the named peace officer. Section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (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 Open Records Decision No. 350 at 3-4 (1982). However, you inform us, and provide documentation demonstrating, the requested information relates to an ongoing criminal case involving the officer whose personnel file records are at issue. Further, you state release of the information at issue would interfere with a pending prosecution. Based on your representations and our review, 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). Accordingly, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code; however, if the department regards the submitted job description as open to the public, the department must release it pursuant to section 552.022(a)(15) of the Government Code.¹

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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian Lancaster". The signature is fluid and cursive, with the first name "Ian" being more prominent than the last name "Lancaster".

Ian Lancaster
Assistant Attorney General
Open Records Division

IML/sb

Ref: ID# 644046

Enc. Submitted documents

c: Requestor
(w/o enclosures)