



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 23, 2019

Mr. Mark Soto  
Records Supervisor  
Pflugerville Police Department  
P. O. Box 679  
Pflugerville, Texas 78691

OR2019-13771

Dear Mr. Soto:

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# 766819 (ORR #W007991-031319).

The Pflugerville Police Department (the "department") received a request for disciplinary records and periodic performance evaluations for a named officer. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;
- (3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

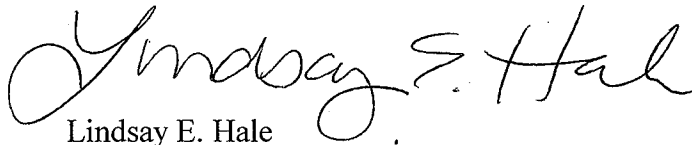
Gov't Code § 552.108(a)-(b). A governmental body raising section 552.108 must reasonably explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). In this instance, the submitted information consists of personnel file information pertaining to the named department officer. Section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not inform us the submitted information pertains to a specific ongoing criminal investigation or prosecution, nor have you explained its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1) or section 552.108(b)(1). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2),

(b)(2). You have not explained the submitted information pertains to any specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, you have failed to demonstrate the applicability of section 552.108(a)(2) or section 552.108(b)(2). Section 552.108(a)(3) is also inapplicable as the information does not relate to a threat against a police officer. *See id.* § 552.108(a)(3). Lastly, you do not assert the information was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the department may not withhold the submitted information under section 552.108. As no further exceptions to disclosure have been raised, the department must release the submitted 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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/jxd

Ref: ID# 766819

Enc. Submitted documents

c: Requestor  
(w/o enclosures)