



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2020

Ms. Josi Diaz
Assistant City Attorney
Criminal Law and Police Section
City Of Dallas
1400 South Lamar Street, 6th Floor, 6W
Dallas, Texas 75215

OR2020-13112

Dear Ms. Diaz:

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# 828217 (ORR# D005430).

The Dallas Police Department (the “department”) received a request for a specified “executive summary[.]” The department claims the submitted information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). 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 an internal administrative investigation of a department officer. The department does not inform us the internal affairs investigation has resulted in a criminal investigation by the department or criminal prosecution and does not otherwise establish release of the submitted information would interfere with law enforcement. Thus, upon review, we find the department has failed to demonstrate the applicability of section 552.108(a)(1) to the submitted information 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 552.1175 of the Government Code.¹ Gov't Code § 552.117(a)(2). It is unclear whether the employee at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information it has marked under section 552.117(a)(2) of the Government Code, as well as the information we have marked, if the employee at issue is a currently licensed peace officer as defined by article 2.12. If the employee is not a currently licensed peace officer as defined by article 2.12, then the department may not withhold this information under section 552.117(a)(2).

Nevertheless, if the employee is not currently a licensed peace officer, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, if the employee is not a currently licensed peace officer as defined by article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then the department must withhold the information at issue under section 552.117(a)(1) of the Government Code. If the former employee is not a currently licensed as a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the department may not withhold the information at issue under section 552.117(a)(1).

¹ "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

In summary, the department must withhold the information marked under section 552.117(a)(2) of the Government Code if the employee at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure; however, if the employee is not a currently licensed peace officer as defined by article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then the department must withhold the marked information under section 552.117(a)(1) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 828217

Enc. Submitted documents

c: Requestor
(w/o enclosures)