



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 17, 2017

Ms. Elizabeth Cater  
Attorney  
Texas Parks & Wildlife  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2017-08069

Dear Ms. Cater:

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# 653973 (TPWD # 2017-01-R71 and 2017-03-R50).

The Texas Parks and Wildlife Department (the "department") received a request for ten categories of information relating to the requestor and two named game wardens. The department received a second request from the same requestor for specified warrants. You state the department does not have some information.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.136 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Although you raise section 552.024, of the Government Code, this section is not an exception to disclosure. *See* Gov't Code § 552.024.

<sup>3</sup>We 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.

interested party may submit written comments regarding why information should or should not be released).

Initially, we note the submitted information includes information contained in public court records. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record[.]” unless the information is expressly made confidential under the Act or other law. *Id.* § 552.022(a)(17). The department seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the information contained in public court records, which we marked, under section 552.108. However, we will address the department’s arguments against disclosure of the remaining information.

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 that claims an exception to disclosure under section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the requested information consists of personnel file records and administrative information pertaining to the named game wardens. 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 a pending criminal investigation involving the game wardens whose personnel file records are at issue. Further, you state the release of the information at issue would interfere with the investigation or prosecution of crime. Based upon your representation and our review, we find section 552.108(a)(1) is applicable the information at issue. *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 remaining information under section 552.108(a)(1).<sup>4</sup>

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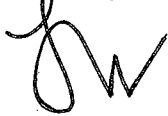
<sup>4</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

In summary, the department must release the information contained in public court records, which we marked, pursuant to section 552.022(a)(17). The department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,



Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/tdw

Ref: ID# 653973

Enc. Submitted documents

c: Requestor  
(w/o enclosures)