



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 17, 2017

Mr. Zachariah T. Evans
Counsel for City of Balch Springs
Akers & Akers, L.L.P.
13625 Pond Springs Road, #204
Austin, Texas 78729

OR2017-15947

Dear Mr. Evans:

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# 666454.

The City of Balch Springs (the "city"), which you represent, received several requests from multiple requestors for information pertaining to a specified incident, information pertaining to involved city personnel, communications involving specified individuals during specified time periods, and information pertaining to similarly related incidents. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You have also forwarded us arguments from the Dallas County District Attorney's Office (the "district attorney's office"). *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from some of the requestors. *See id.*

Initially, we note you have not submitted any information responsive to portions of some of the requests. To the extent any information responsive to these portions of the requests existed on the date the city received the corresponding requests, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental

body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address a claim by one of the requestors the city failed to comply with the procedural requirements a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(d) of the Government Code, a governmental body must, within ten business days of receiving the request for information, provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general. *Id.* § 552.301(d). After reviewing the submitted documents, we find the city complied with the requirements of section 552.301 in requesting this decision from our office.

Next, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the officer's TCOLE identification number

in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestor.

Next, we note the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, some of the requestors who requested the body worn camera recordings do not give the requisite information under section 1701.661(a). As these requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information with respect to them and they need not be released to these requestors.¹ However, pursuant to section 1701.661(b), a "failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor[s] from making a future request for the same recorded information." *Id.* § 1701.661(b). With regard to the requestors who did give the requisite information under section 1701.661(a), we will consider the submitted arguments against disclosure of this information.

Next, we note the remaining information contains an agenda of a public meeting. The agendas of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Although the city and district attorney's office seek to withhold this information under sections 552.103 and 552.108 of the Government Code, as a general rule, the exceptions to

¹As we are able to make this determination, we need not address the remaining arguments against disclosure of this information with respect to the requestors who did not give the requisite information under section 1701.661(a).

disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the city must release the submitted agenda of a public meeting we have marked pursuant to sections 551.041 and 551.043 of the Government Code.

Next, we note the remaining information contains city press releases. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the city may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although the city and district attorney's office seek to withhold the previously released information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision No. 177 at 3 (1977). Therefore, the city may not withhold the submitted city press releases under section 552.103 or section 552.108 of the Government Code. As no other exceptions to disclosure have been raised for the city press releases, the city must release the submitted city press releases.

Next, we note some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). The remaining information includes completed investigations and reports that are subject to section 552.022(a)(1). The city must release the completed investigations and reports pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* § 552.022(a)(1). The remaining information also contains court-filed documents that are subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See*

id. § 552.022(a)(17). The city and the district attorney's office seek to withhold the information subject to section 552.022(a)(1) under section 552.103 of the Government Code and the information subject to section 552.022(a)(17) under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary in nature and do not make information confidential under the Act. *See 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the information subject to section 552.022(a)(1) may not be withheld under section 552.103 of the Government Code and the court-filed documents subject to section 552.022(a)(17) may not be withheld under section 552.103 or section 552.108 of the Government Code. Portions of the court-filed documents may be subject to sections 552.117 and 552.130 of the Government Code.² As these sections make information confidential under the Act, we will consider the applicability of these exceptions to the court-filed documents. Further, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider the arguments under section 552.108 for the information at issue. Further, we will consider the arguments for the information not subject to section 552.022 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we find some of the submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997, and is, therefore, subject to section 58.007(c). *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). None of the exceptions in section 58.007 appear to apply; therefore, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.³

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 (Tex. 1977). We note section 552.108 is generally not applicable to administrative information or records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. 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). The district attorney’s office states the remaining information pertains to a case pending criminal prosecution by the district attorney’s office and objects to the release of the information at issue. Based on the submitted representation, we conclude the 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). Thus, section 552.108(a)(1) is applicable to the information at issue. Therefore, the city may withhold the remaining information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code.

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

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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. 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 have marked information under section 552.117 that consists of the personal information of a peace officer who was employed by the city and the information is held in an employment context. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, to the extent the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12, then the city may not withhold the marked information under section 552.117(a)(2).

If the information we marked under section 552.117 pertains to an individual who is no longer a licensed peace officer, then the marked information 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. *Id.* § 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. Therefore, to the extent the individual at issue is no longer a licensed peace officer as defined by article 2.12 and to the extent the individual timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue is no longer a licensed peace officer as defined by article 2.12 or did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).⁴

To the extent the individual at issue is no longer a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure and the individual did not timely request confidentiality under section 552.024 of the Government Code, some of the information at

⁴Regardless of the applicability of section 552.117 of the Government Code, we note 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 a decision from this office. See Gov't Code § 552.147(b).

Government Code provides information relating to a motor vehicle operator's license, 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. *See* Gov't Code § 552.130. Accordingly, to the extent the individual at issue is no longer a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure and the individual did not timely request confidentiality under section 552.024 of the Government Code, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

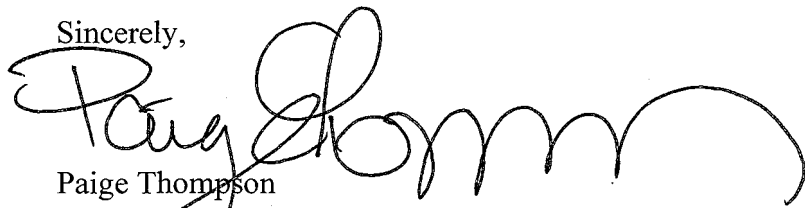
In summary, the TCOLE identification number in the submitted information is not subject to the Act and need not be released to the requestor. With respect to the requestors who did not give the requisite information under section 1701.661(a) of the Occupations Code, our ruling does not reach the submitted body worn camera recordings and that information need not be released to those requestors. The city must release the submitted agenda of a public meeting we have marked pursuant to sections 551.041 and 551.043 of the Government Code. The city must release its submitted city press releases. The city must withhold certain information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city may withhold the remaining information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code. To the extent the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. To the extent the individual at issue is no longer a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure and to the extent the individual timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. To the extent the individual at issue is no longer a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure and the individual did not timely request confidentiality under section 552.024 of the Government Code, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining information subject to section 552.022(a)(17) 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, 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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 666454

Enc. Submitted documents

c: Requestors
(w/o enclosures)