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ATTORNEY GENERAL OF TEXAS

October 24, 2017

Ms. Lee I. Correa
Counsel for Wood County
Flowers Davis, P.L.L.C.
1021 East Southeast Loop 323, Suite 200
Tyler, Texas 75701

OR2017-24262

Dear Ms. Correa:

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# 681026.

The Wood County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information pertaining to specified incidents and named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.1175, 552.130, 552.137, 552.140, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. 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.

Gov't Code § 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. Thus, we find the TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the submitted TCOLE identification numbers are not subject to the Act and need not be released to the requestor.¹

Next, we note the remaining 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 provides, in relevant part, the following:

(a) 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, the requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a "failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded

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

information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Additionally, we note some of the information at issue may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-18810 (2016). We note some of the submitted information may have been previously released in response to Open Records Letter No. 2016-18810. We note the Act does not permit selective disclosure of information to the public. *See* Gov’t Code §§ 552.007 (b), .021; Open Records Decision No. 463 at 1-2 (1987). Thus, as a general rule, if a governmental body voluntarily releases information to a member of the public, the information 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(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). You raise sections 552.103 and 552.108 of the Government Code for the information at issue. We note sections 552.103 and 552.108 are discretionary exceptions to disclosure that protect a governmental body’s interests and may be waived. *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 section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, sections 552.103 and 552.108 of the Government Code do not prohibit the release of information or make information confidential. Thus, to the extent the information responsive to the instant request was released in response to the previous request, it may not now be withheld under section 552.103 or section 552.108. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the sheriff’s office must continue to rely on Open Records Letter No. 2016-18810 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, to the extent the submitted information is not identical to the information responsive in the previous ruling, we will address your submitted arguments against its disclosure.

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;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

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

Gov't Code § 552.022(a)(1), (3), (17). The remaining information includes completed reports and evaluations that are subject to section 552.022(a)(1). The sheriff's office must release the completed reports and evaluations 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 information in an account, contract, or voucher relating to the receipt or expenditure of funds by the sheriff's office that is subject to section 552.022(a)(3) and 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)(3), (17). You seek to withhold the information subject to sections 552.022(a)(3) and 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*, 4 S.W.3d at 475-76; ORD 542 at 4; ORD 177 at 3. Therefore, the information subject to sections 552.022(a)(3) and 552.022(a)(17), which we have marked, may not be withheld under section 552.103 or section 552.108 of the Government Code. As you raise no further exceptions for the information at issue, this information must be released. However, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your argument under section 552.108 for the information at issue. Further, we will consider your arguments for the information not subject to section 552.022 of the Government Code.

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 some of the information at issue consists of personnel records pertaining to peace officers. 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 (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). You state the remaining information pertains to pending criminal prosecutions by the Wood County District Attorney’s Office (the “district attorney’s office”). Further, you state, and provide documentation showing, the district attorney’s office has requested the information at issue not be released because its release would interfere with the prosecutions. Based on these representations, 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 remaining information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note the basic information does not include dates of birth or motor vehicle record information. *See* ORD 127 at 3-4. Thus, with the exception of the information subject to sections 552.022(a)(3) and 552.022(a)(17) and the basic information, which must be released, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

We note some of the information subject to section 552.022(a)(3) of the Government Code is excepted from disclosure under section 552.136 of the Government Code.³ Section 552.136 provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, the sheriff’s office must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

In summary, the submitted TCOLE identification numbers are not subject to the Act and need not be released to the requestor. As the requestor did not properly request the submitted

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code.

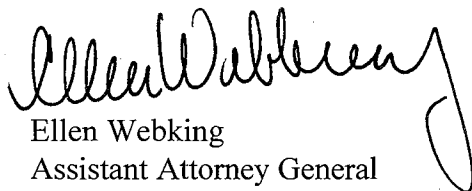
³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

body worn camera recordings pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. To the extent the remaining information is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office must continue to rely on Open Records Letter No. 2016-18810 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of the information subject to sections 552.022(a)(3) and 552.022(a)(17) of the Government Code and the basic information, which must be released, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the information subject to section 552.022(a)(3), the sheriff's office must withhold the bank account and routing numbers we have marked under section 552.136 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/tdw

Ref: ID# 681026

Enc. Submitted documents

c: Requestor
(w/o enclosures)