



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 6, 2017

Ms. Kirsten B. Cohoon
City Attorney
City of Boerne
P.O. Box 1677
Boerne, Texas 78006

OR2017-25403

Dear Ms. Cohoon:

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# 683001.

The Boerne Police Department (the "department") received a request for the personnel file of a named officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.115, 552.1175, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains 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.

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 officer's TCOLE number does not constitute public information under section 552.002 of the Government Code. Therefore, the officer's TCOLE number is not subject to the Act and need not be released to the requestor.¹

Next, we note the remaining information contains job descriptions, which are usually open to the public as part of a job posting. Section 552.022(a)(15) of the Government Code provides for the required disclosure of "information regarded as open to the public under an agency's policies," unless it is made confidential under the Act or other law. *See* Gov't Code § 552.022(a)(15). If the department regards the submitted job descriptions as open to the public, then that information is subject to section 552.022(a)(15). Although you argue this information is excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the submitted job descriptions may not be withheld under section 552.108 pursuant to section 552.022(a)(15) if they are regarded by the department as open to the public. As you raise no other exceptions for the job descriptions, they must be released if the department considers them as open to the public under its policies. However, we will consider your assertion of section 552.108 for the job descriptions if they are not considered to be open to the public under the department's policies. We will also consider your arguments for the remaining information not subject to section 552.022 of the Government Code.

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

Section 552.108(a)(1) of the Government Code exempts 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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the submitted information consists of personnel file records pertaining to a peace officer. 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 (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 state the Kendall County Criminal District Attorney’s Office objects to the release of the information at issue because it relates to a pending criminal prosecution, and the named officer whose personnel file records are at issue was the arresting officer in that case. Based upon your representation and our review, we conclude release of the submitted information will 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). Accordingly, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

In summary, the TCOLE identification number in the submitted information is not subject to the Act and need not be released to the requestor. The department must release the job descriptions pursuant to section 552.022(a)(15) of the Government Code if the department considers them as open to the public under its policies. 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, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 683001

Enc. Submitted documents

c: Requestor
(w/o enclosures)