



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2018

Ms. Caitlin Culpepper
Records Supervisor
Taylor County Sheriff's Office
450 Pecan Street
Abilene, Texas 79602-1692

OR2018-01786

Dear Ms. Culpepper:

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# 696043.

The Taylor County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named deputy. The sheriff's office states it does not have some of the requested information.¹ The sheriff's office also states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). 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)

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd).

(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). Although the sheriff's office claims the submitted information is subject to section 552.108(a)(2), we note this information pertains to an internal affairs investigation that is purely administrative in nature. As a result, we find the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(2) to this information. Accordingly, the sheriff's office may not withhold the submitted information under section 552.108(a)(2) of the Government Code.

We note section 552.117 of the Government Code is applicable to some of the remaining information.² Section 552.117(a)(2) 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 section 552.1175 of the Government Code. 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. *Id.* It is unclear whether the former employee at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the sheriff's office must withhold the information we have 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. If the former employee is no longer a licensed peace officer as defined by article 2.12, then the sheriff's office may not withhold this information under section 552.117(a)(2).

Nevertheless, if the former employee is no longer 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, to the extent the former employee is no longer a currently licensed peace officer as defined

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

by article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then the sheriff's office must withhold the information at issue under section 552.117(a)(1) of the Government Code. Conversely, to the extent the former employee is no longer currently licensed as a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the sheriff's office may not withhold the information at issue under section 552.117(a)(1).

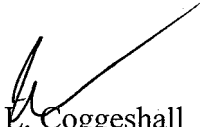
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The sheriff's office must withhold the visible license plates in the submitted recordings under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the former employee is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure; however, if the former employee is no longer 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 sheriff's office must withhold the information at issue under section 552.117(a)(1) of the Government Code. The sheriff's office must withhold the visible license plates in the submitted recordings under section 552.130 of the Government Code. The sheriff's office 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 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,


James E. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tdw

Ref: ID# 696043

Enc. Submitted documents

c: Requestor
(w/o enclosures)