



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 30, 2019

Ms. Myrna S. Reingold
Legal Department
County of Galveston
722 Moody Avenue, 5th Floor
Galveston, Texas 77550

OR2019-14334

Dear Ms. Reingold:

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# 767830.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named peace officer. You state the sheriff's office has released some information. You also state the sheriff's office will redact some of the requested information in accordance with Open Records Decision Nos. 670 (2001) and 684 (2009).¹ You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.1175, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered your arguments and reviewed the submitted information.

¹See ORD 670 (authorizing governmental bodies to withhold certain personal information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting attorney general decision), 684 (authorizing governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306(b) of the Occupations Code; and an e-mail address of a member of the public under section 552.137 of the Government Code).

Initially, you note, and we agree, 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.

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. 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 some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" *Id.* § 552.022(a)(1). The remaining information contains a completed internal affairs investigation and evaluations that are subject to section 552.022(a)(1). The information subject to section 552.022(a)(1) must be released unless it is excepted under section 552.108 of the Government Code or is confidential under the Act or other law. *Id.* Although you assert the information subject to section 552.022(a)(1) is excepted from disclosure under section 552.103 of the Government

Code, this section is discretionary and does 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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the sheriff's office may not withhold the information at issue under section 552.103. You also raise section 552.108 of the Government Code. As previously noted, section 552.022(a)(1) states information subject to that section may be withheld under section 552.108. Thus, we will address your argument under section 552.108 for the information subject to section 552.022(a)(1), as well as for the remaining information. Further, because sections 552.101, 552.102, 552.117, 552.1175, 552.130, 552.136, and 552.137 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions for the information at issue. We will also consider your argument under section 552.103 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the requested information consists of a personnel file of the named 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.) (section 552.108 generally not applicable to law enforcement agency’s personnel records); *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); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you inform us, and provide documentation demonstrating, the remaining information pertains to pending criminal prosecutions. You state the officer whose information is at issue was the arresting or investigating officer and is expected to testify at the trials. You also state release of the remaining information would interfere with the investigation or prosecution of crime. Based on your representations and our review, we find the release of the remaining information would interfere with the detection, investigation, and prosecution of a 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, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

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

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. The sheriff's office 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 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 that reads "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/gw

Ref: ID# 767830

Enc. Submitted documents

c: Requestor
(w/o enclosures)