



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 11, 2019

Ms. Molly G. Solis
City Attorney
City of Boerne
P.O. Box 1677
Boerne, Texas 78006

OR2019-15506

Dear Ms. Solis:

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# 769615.

The Boerne Police Department (the "department") received two requests from different requestors for a named officer's personnel file. You claim the submitted information is excepted from disclosure under sections 552.108, 552.117, 552.119, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The court-filed document we marked is subject to section 552.022(a)(17). You seek to withhold this information under section 552.108 of the Government Code, which is a discretionary exception to disclosure that may be waived and does not make information confidential

¹Although you raise 552.1175, we note section 552.117 is the correct exception to raise for information the department holds in its capacity as employer. Further, although you also raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

under the Act. *See id.* § 552.108; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the marked court-filed document under section 552.108. However, we note the court document is subject to section 552.117 which makes information confidential under the Act. Therefore, we will address the applicability of this section to the information subject to section 552.022(a)(17).

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.² Gov't Code § 552.117(a)(2). Upon review, we find the department must withhold the information we marked under section 552.117(a)(2) of the Government 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[.]” *Id.* § 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 records that are purely administrative in nature and 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. 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). You state the remaining information pertains to an active criminal investigation and indicate the named officer was involved in the pending case. Based on your representations and our review, we conclude the release of the remaining information 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

²Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

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

S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information and the department may withhold it on those grounds.⁴

In summary, the department must release the court-filed document we marked under section 552.022(a)(17) of the Government Code. In releasing the court-filed document, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Emily Buchanan
Attorney
Open Records Division

EB/be

Ref: ID# 769615

Enc. Submitted documents

c: 2 Requesters
(w/o enclosures)

⁴As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.