



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 20, 2019

Mr. William Overton  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2019-16841

Dear Mr. Overton:

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# 771585 (ORR# DT0139).

The Texas Department of Criminal Justice (the "department") received a request for call and text logs related to a specified telephone number during a specified time period. The department states it is withholding information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>1</sup> The department further states it is withholding information under section 552.1175 of the Government Code.<sup>2</sup> The department also states it is withholding access device numbers pursuant to section 552.136(c)

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<sup>1</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

<sup>2</sup>Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b) the Government Code, without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, date of birth, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See* Gov't Code § 552.1175(f).

of the Government Code.<sup>3</sup> The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted representative sample of information.<sup>4</sup>

Initially, the department contends some of the submitted information is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) 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.

*Id.* § 552.002(a). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

The department informs us the telephone numbers it highlighted in pink consist of telephone numbers relating to personal calls not connected to the transaction of official business of the department. *See* Open Records Decision No. 635 (1995) (statutory predecessor not

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<sup>3</sup>Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

<sup>4</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Based on the department's representations and our review of the information at issue, we agree the information the department highlighted in pink does not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the department. *See* Gov't Code § 552.002. Therefore, we conclude the information the department highlighted in pink is not subject to the Act and need not be released in response to the present request for information.

Section 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution[.]" *Id.* § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 508 (1988) (release of dates of prison transfer could impair security), 413 (1984) (release of sketch showing security measures to be used during execution would unduly interfere with law enforcement). In Open Records Decision No. 506 (1988), this office determined the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." ORD 506 at 2. We noted the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and public access to these numbers could interfere with that purpose. *Id.*

The department informs us the information it highlighted in yellow consists of the telephone numbers of department employees and other law enforcement officials who function in key positions. The department informs us these individuals' positions require rapid responses to emergencies and serious incidents arising in prison units and in the field with parolees. The department asserts the release of this information would interfere with law enforcement. Based on these representations and our review, we conclude the department may withhold the telephone numbers it highlighted in yellow under section 552.108(b)(1) of the Government Code.<sup>5</sup>

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<sup>5</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

In summary, the information the department highlighted in pink is not subject to the Act and need not be released. The department may withhold the information it highlighted in yellow under section 552.108(b)(1) of the Government Code. The department must release the remaining information.

The department also asks this office to issue a previous determination that would permit it to withhold information without requesting a ruling from this office. Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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](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 M. Graham  
Assistant Attorney General  
Open Records Division

JMG/gw

Ref: ID# 771585

Enc. Submitted documents

c: Requestor  
(w/o enclosures)