



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 27, 2019

Ms. ML Calcote  
Assistant General Counsel  
Texas Department of Public Safety  
Box 4087  
Austin, Texas 78773-0001

OR2019-27174

Dear Ms. Calcote:

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# 787966 (PIR# 19-3157).

The Texas Department of Public Safety (the "department") received a request for information pertaining to three specified investigations. You state you have released some information. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the submitted information relates to an internal affairs investigation conducted by the department's Office of Inspector General. 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). In this instance, however, the department states the submitted information pertains to an ongoing criminal investigation. Based upon your representation and our review, we find release of the information you marked 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 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the information it marked under section 552.108(a)(1) of the Government Code.

We note some of the remaining information may be subject to section 552.117(a)(2) of the Government Code.<sup>1</sup> Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether that peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Thus, the department must withhold the cellular telephone numbers we marked under section 552.117(a)(2) of the Government Code if the cellular telephone services are not paid for by a governmental body.

In summary, the department may withhold the information it marked under section 552.108(a)(1) of the Government Code. The department must withhold the cellular telephone numbers we marked under section 552.117(a)(2) of the Government Code if the cellular telephone services are not paid for by a governmental body. The department 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kimbell Kesling  
Attorney  
Open Records Division

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 787966

Enc. Submitted documents

c: Requestor  
(w/o enclosures)