



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 17, 2019

Mr. Evan D. Reed
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2019-29203

Dear Mr. Reed:

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# 792012 (Reference No. 19-1026-10635).

The El Paso Police Department (the "department") received a request for (1) police officers' notes during a stated time period; (2) information regarding the department's speed detection equipment, including operating manuals, calibration records, and maintenance records; and (3) police officer training and certification records regarding a specified citation. You claim some of the submitted information is subject to section 552.027 of the Government Code. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note you have not submitted police officers' notes during a stated time period. To the extent any information responsive to this portion of the request existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if

¹ Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. *See* Gov't Code §§ 552.301, .302.

governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information contains a 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. 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 a TCOLE identification number is a unique computer-generated number assigned to licensees for identification in TCOLE’s electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the 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 the department need not release it to the requestor.²

Section 552.027 of the Government Code provides the Act does not require a governmental body to allow the inspection of information in a commercial publication purchased or acquired by the governmental body for research purposes if the publication is commercially available to the public. *See* Gov’t Code § 552.027(a). You state the requested manuals were purchased by the department in connection with the purchase of speed detection

²As our ruling is dispositive, we need not address your arguments against disclosure of this information.

equipment. You also state the manuals at issue are commercially available. Accordingly, based upon your representations, we conclude the requested manuals are commercially available information that falls within the scope of section 552.027 of the Government Code and need not be released to the requestor.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: (1) 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 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, you state the remaining information relates to an ongoing criminal prosecution, and release of this information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the information at issue 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, we conclude section 552.108(a)(1) is applicable to the information at issue, and the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

In summary, the TCOLE identification number is not subject to the Act, and the department need not release it to the requestor. The requested manuals are commercially available information that falls within the scope of section 552.027 of the Government Code and need not be released to the requestor. 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.

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

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 792012

Enc. Submitted documents

c: Requestor
(w/o enclosures)