



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2019

Mr. Jeffrey C. Monk
Administration Manager
Houston Police Department
1200 Travis Street, 10th Floor
Houston, Texas 77002-6000

OR2019-32969

Dear Mr. Monk:

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# 797802 (ORU# 19-09708).

The Houston Police Department (the "department") received a request for all e-mails sent and received by a named employee during a specified time period. You claim some of the submitted information is excepted from disclosure under sections 552.108, 552.117, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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);

¹ Although the department raises section 552.101 of the Government Code, it makes no arguments to support this exception. Therefore, we assume the department has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

² 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.

see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You state Exhibit 3 relates to a pending investigation and prosecution. Based on your representation and our review, we find release of some 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). Thus, the department may withhold the dispatch reports in Exhibit 3 under section 552.108(a)(1) of the Government Code. However, we find you have failed to demonstrate the remaining information in Exhibit 3 would interfere with the detection, investigation, or prosecution of crime. Thus, we find the department may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit 2 pertains to a concluded investigation that did not result in conviction or deferred adjudication. Thus, the department may withhold the dispatch reports in Exhibit 2 under section 552.108(a)(2) of the Government Code. However, we find you have failed to demonstrate the remaining information in Exhibit 2 consists of information that deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication for purposes of section 552.108(a)(2). Thus, we find the department may not withhold any of the remaining information under section 552.108(a)(2) of the Government Code.

You assert section 552.117 of the Government Code is applicable to some of the remaining information. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.³ *Id.* § 552.117(a)(2). It is unclear whether some of the individuals at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the individuals at issue are currently licensed peace officers as defined by article 2.12. If the individuals at issue are not currently licensed peace officers as defined by article 2.12, then the department may not withhold this information under section 552.117(a)(2).

Nevertheless, if the individuals at issue are not currently licensed peace officers, then the information at issue may be subject to section 552.117(a)(1) of the Government Code.

³ "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individuals at issue are not currently licensed peace officers as defined by article 2.12 and they timely requested confidentiality under section 552.024 of the Government Code, then the department must withhold the information at issue under section 552.117(a)(1) of the Government Code. To the extent the individuals at issue are not currently licensed as peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the department may not withhold the information at issue under section 552.117(a)(1).

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the department must withhold the personal e-mail address you marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

Section 552.139 of the Government Code provides, in relevant part:⁴

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Id. § 552.139(a). Section 2059.055 of the Government Code provides, in pertinent part:

⁴ 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)*.

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). You state, and the information at issue reflects, Exhibit 5 provides details about the department's network security by revealing username and password information for one of the department's criminal databases. You state release of this information could allow unauthorized access to the department's computer network and potential access to confidential and sensitive records. Based on these arguments and our review of the information, we find the information at issue relates to computer network security. Accordingly, the department must withhold Exhibit 5 under section 552.139 of the Government Code.⁵

In summary, the department may withhold the dispatch reports in Exhibit 3 under section 552.108(a)(1) of the Government Code. The department may withhold the dispatch reports in Exhibit 2 under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the individuals at issue are currently licensed peace officers as defined by article 2.12. To the extent the individuals at issue are not currently licensed peace officers as defined by article 2.12 and they timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information at issue under section 552.117(a)(1) of the Government Code. The department must withhold the personal e-mail address you marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The department must withhold Exhibit 5 under section 552.139 of the Government Code. 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.

⁵ As 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KM/rm

Ref: ID# 797802

Enc. Submitted documents

c: Requestor
(w/o enclosures)