



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

December 5, 2019

Ms. Erin Ham  
Deputy City Clerk  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2019-34192

Dear Ms. Ham:

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# 800197 (Reference No. 897).

The Wichita Falls Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor, including specified department policies and information pertaining to certain department equipment and officers. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the requestor asks the department to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision Nos. 561 at 8-9 (1990), 555 at 1-2. We assume the department has made a good faith effort to do so.

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.<sup>1</sup>

Next, we note some of the remaining information is subject to section 552.022 of the Government Code, which provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(15) information regarded as open to the public under an agency's policies[.]

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<sup>1</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

*Id.* § 552.022(a)(15). The information at issue consists of a job description, which is generally open to the public as part of a job posting, subject to section 552.022(a)(15). *Id.* To the extent the department considers the job description open to the public, the department may only withhold the information subject to section 552.022(a)(15) only to the extent this information is confidential under the Act or other law. *See id.* You seek to withhold the information at issue, which we marked, under sections 552.103 and 552.108 of the Government Code. However, these exceptions are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the information subject to section 552.022(a)(15) under section 552.103 or section 552.108 of the Government Code. Accordingly, if the department regards the submitted job description as open to the public under its policies, then the department must release this information pursuant to section 552.022(a)(15) of the Government Code. If the department does not regard the job description at issue as open to the public under its policies, then we will consider your arguments under sections 552.103 and 552.108 for the information at issue. We will also consider your arguments against disclosure for the remaining information not subject to section 552.022.

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[.]” 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). You state the remaining information relates to a pending criminal prosecution. 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.<sup>2</sup>

In summary, the submitted TCOLE identification number is not subject to the Act and need not be release to the requestor. To the extent the department considers the marked job description to be open to the public under its policies, the department must release this information pursuant to section 552.022(a)(15) of the Government Code. The department

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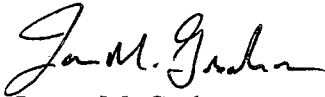
<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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 <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/jxd

Ref: ID# 800197

Enc. Submitted documents

c: Requestor  
(w/o enclosures)