



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 8, 2022

Ms. Lindsey M. Hale
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Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-23476

Dear Ms. Hale:

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# 964955 (ORR# 2022-160).

The City of Boerne (the "city"), which you represent, received a request for information pertaining to a named officer. The city states it will withhold information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ The city claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.1175 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.108(a) 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 information at issue 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, 710 (Tex. 1977). However,

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

section 552.108 is generally not applicable to information that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. 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 City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency’s personnel records); Open Records Decision No. 350 at 3-4 (1982). The city states the submitted information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of arrest report number 18273 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). However, we find section 552.108(a)(1) is not applicable to the remaining information and the city may not withhold it on that ground.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in the *Houston Chronicle* decision, including the home address and telephone number of an arrestee. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle* decision). Thus, with the exception of basic information, the city may withhold arrest report number 18273 under section 552.108(a)(1) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. For purposes of section 552.1175, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *Cf.* Gov’t Code § 552.117(c) (“family member” has meaning assigned by Fin. Code § 31.006(d)). Section 552.1175, applies, in part, to “current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” Gov’t Code § 552.1175(a)(1); *see id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). The city has submitted an election by the named officer to keep his information confidential. Accordingly, the city must withhold the basic information we have marked in arrest report number 18273 under section 552.1175 of the Government Code. However, section 552.1175 is not applicable to the remaining information, including the identifying information of the victim at issue in arrest report number 18273. Therefore, the city may not withhold any of the remaining information on that ground.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]”² Gov’t Code § 552.102(a). The Texas Supreme Court has held section

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The city must withhold the date of birth in the remaining information under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2); *see also id.* 552.003(1-b)) (defining "honorably retired" for purposes of the Act). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, section 552.117 is not applicable to the remaining information. Therefore, the city may not withhold any of the remaining information on that ground.

In summary, with the exception of basic information, the city may withhold arrest report number 18273 under section 552.108(a)(1) of the Government Code; however, in releasing basic information, the city must withhold the information we have marked under section 552.1175 of the Government Code. The city must withhold the date of birth in the remaining information under section 552.102(a) of the Government Code. The city must also withhold the information we have marked under section 552.117(a)(2) of the Government Code. The city 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)