



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 21, 2022

Ms. Jacqueline Villarreal  
Assistant District Attorney  
Hidalgo County District Attorney's Office  
100 East Cano Street  
Edinburg, Texas 78539

OR2022-32587

Dear Ms. Villarreal:

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# 979496 (ORR 2022-0167-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case number. You state the sheriff's office will release some information to the requestor. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of the McAllen Police Department (the "department"). Accordingly, you state, and provide documentation showing, the sheriff's office notified the department of the request for information and of the right to submit comments to this office why the submitted information should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have received comments from the department. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information includes officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as the following:

[I]nformation 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(a). 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 an officer's TCOLE identification number is a unique computer generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the officer's TCOLE number does not constitute public information under section 552.002 of the Government Code. Therefore, the officer's TCOLE number is not subject to the Act and need not be released to the requestor.

Next, we note the remaining information includes a magistrate's warning that was filed with a court. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the sheriff's office seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Additionally, although the sheriff's office seeks to withhold some of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy, we note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the magistrate's warning may not be withheld under section 552.101 or section 552.108. Thus, the sheriff's office must release the magistrate's warning pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining

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). Generally, 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where an agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration the information relates to the pending case, and (2) and a representation from the law enforcement agency stating that it wishes to have the information withheld. The sheriff’s office states the information at issue relates to an open and active criminal investigation that is pending with the department. The department also states it objects to the disclosure of the information at issue because its release would interfere with the investigation or prosecution of the case. Based on these representations, 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, 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). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, 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 *Houston Chronicle*. *See* 531 S.W.2d at 186-88); *see also Open Records Decision No. 127 at 3-4 (1976)* (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the department.<sup>1</sup>

In summary, the officer’s TCOLE number is not subject to the Act and need not be released to the requestor. The sheriff’s office must release the magistrate’s warning pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the department.

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.

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments 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,

Sarah E. Reese  
Attorney  
Open Records Division

SER/pt

Ref: ID# 979496

Enc. Submitted documents

c: Requestor  
(w/o enclosures)