



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 25, 1997

Ms. Marva M. Gay
Assistant County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR97-0425

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104026.

The Constable of Harris County Precinct 8 (the "Constable") received a request for four categories of information relating to the authority of the Constable and Deputy Constables to carry out certain duties and for "[a] list, roll call, or roster providing the name, badge number, and employee ID number of the 'Constable' and every 'Deputy Constable' of Precinct 8." You contend that the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

As for categories 1 through 3 of the request, you contend that answering these requests would require the Constable to perform legal research and that the Constable is, therefore, not obligated to respond to these requests. We agree. We addressed a similar situation in Open Records Decision No. 563 (1990). In that case, the requestor sought documents showing the authority of a non-profit corporation to engage in various activities. We ruled as follows:

While couched as requests for documents, these are essentially requests for federal and state laws and regulations governing the activities of the corporation and for a statement of the corporation's interpretation of these provisions. The Open Records Act does not require a governmental body to perform legal research for a requestor nor to answer general questions.

Id. at 8. Categories 1 through 3 of the request are analogous to the request we dealt with in Open Records Decision No. 563 (1990). Therefore, we conclude that the Constable is not required to respond to categories 1 through 3 of the request.

Next, you state that the Constable "is not the custodian of the information sought under request number 4." The Open Records Act does not ordinarily require a governmental body to create or obtain new information in order to comply with a request. Open Records Decision Nos. 561 (1990), 534 (1989). Thus, under the circumstances presented here, the Constable is not required to respond to item 4 of the request.

Finally, you contend that the requested list of names, badge numbers, and employee identification numbers is excepted from disclosure in its entirety under sections 552.103 and 552.108 of the Government Code. The Harris County Personnel Department, not the Constable, maintains employee identification numbers. You state that employee identification numbers may correspond to employee social security numbers and may, therefore, be excepted from disclosure under 552.117 of the Government Code.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have not demonstrated how section 552.103(a) is applicable to the requested list. Therefore, the Constable may not withhold the list from disclosure under section 552.103(a).

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We believe that the list of names, badge numbers, and employee identification numbers is generally related to personnel matters rather than law enforcement and prosecution. *See also* Open Records Decision No. 342 (1982) (certain information about public employees, including name and position, has long been held disclosable). Accordingly, we conclude that the list is not excepted from disclosure under section 552.108.

Section 552.117(2) excepts from disclosure the social security number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. Thus, you must not release the social security number of any peace officer. Section 552.117(1), together with section 552.024 of the Government Code, permits a government official or employee to choose whether to allow public access to his/her social security number. Therefore, you must not release the social security number of any official or employee who, before this request was made, asked that this information be kept confidential. Additionally, we note that a social security number is excepted from required

public disclosure under section 552.101 of the Government Code¹ in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).*

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 104026

Enclosures: Submitted documents

cc: Mr. John Michael Coy
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(w/o enclosures)

¹Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."