



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2012

Ms. Myrna Reingold
Galveston County Legal Department
County Courthouse
722 Moody, 5th Floor
Galveston, TX 77550-2317

OR2012-00701

Dear Ms. Reingold:

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# 442360.

Galveston County Constable Precinct No. 4 (the "constable") received a request for all emails received by or sent to a named constable for a specified period of time.¹ You state the constable has made some of the requested documents available to the requestor. You state the constable will redact some of the requested information, including some of the information you submitted, in accordance with sections 552.024 and 552.147 of the Government Code and Open Records Decision nos. 670 (2001) and 684 (2009).² You claim

¹The constable sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

²*See* Gov't Code §§ 552.024(c)(2) (authorizing governmental bodies to redact certain personal information pertaining to employees who properly elected to keep their information confidential without the necessity of requesting a ruling from this office if proper notice is provided to requestor pursuant to section 552.024(c-2)), 552.1175(f) (authorizing governmental bodies to redact certain information excepted under section 552.1175(b) without the necessity of requesting a decision from the attorney general if proper notice is provided to requestor pursuant to section 552.1175(h)), 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act); ORD 684

some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.137 of the Government Code.³ We have considered your arguments and reviewed the submitted representative sample of information.⁴

The Act applies to “public information,” which is defined in section 552.002 of the Government Code as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” Gov’t Code § 552.002. Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

You inform us a portion of the submitted information consists of personal e-mails that do not relate to the transaction of official constable business. You state these e-mails represent the employee’s personal use of his e-mail account under the constable’s electronic communications policy. Based on your representations and our review, we agree some of the information at issue does not constitute “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the city. *See* Gov’t Code § 552.021; *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, this information, which we have marked, is not subject to the Act and need not be released in response to this request. However, upon review, we find the remaining information at issue was collected or assembled or is maintained in connection with the transaction of official city business; thus, the remaining information at issue

(authorizing governmental bodies to withhold ten 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 requesting an attorney general opinion), 670 (authorizing governmental bodies to withhold certain personal information of peace officers under section 552.117(a)(2) without the necessity of requesting attorney general decision).

³Although you also raise section 552.109 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you no longer assert this exception. *See* Gov’t Code §§ 552.301, 552.302.

⁴We 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.

constitutes “public information” as defined by section 552.002(a). Accordingly, this information is subject to the Act and must be released, unless the information falls within an exception to public disclosure under the Act.

Section 552.108(b) of the Government Code excepts from disclosure “[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 . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department’s use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You inform us the submitted documents contain information about the constable’s security system at the facility where the constable is located, including whether the system is activated, when it is activated, and who is able to activate or deactivate it. You state this information is excepted from disclosure under section 552.108(b)(1) because it “is transmitted and maintained for internal use in maintaining security at the facility, which is a matter related to law enforcement.” After reviewing the information at issue and your arguments and representations, we agree the release of the information you have marked

under section 552.108(b)(1) would interfere with law enforcement. Thus, the constable may withhold the information you have marked under section 552.108(b)(1).⁵

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. The submitted information contains a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* The requestor has not provided the constable with two of the three pieces of information. Thus, the constable must withhold the accident report at issue, which we have marked, under section 552.101 in conjunction with section 550.065(b).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual’s mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* ORD 600 (personal financial information includes choice of particular insurance carrier). The submitted documents contain personal financial information, and the public does not have a legitimate interest in it. *See* Open Records Decision Nos. 620 (1993), 600. We have marked the information that the constable must withhold under section 552.101 in conjunction with common-law privacy.

⁵As our ruling is dispositive, we do not address your other arguments to withhold this information.

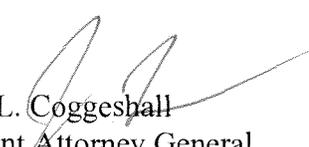
Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. As noted in part above, you inform us the constable will redact the e-mail addresses you have marked in the submitted information pursuant to Open Records Decision No. 684. The constable must also withhold the e-mail addresses we have marked in the remaining information under section 552.137.

We conclude the following: the constable (1) is not required to release the information we have marked that is not subject to the Act; (2) may withhold the information you have marked under section 552.108(b)(1) of the Government Code; (3) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code and common-law privacy and under section 552.137 of the Government Code; and (4) 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 442360

Enc. Submitted documents

c: Requestor
(w/o enclosures)