



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2014

Ms. Tiffany N. Leal
Chief Civil Prosecutor
Comal County Criminal District Attorney's Office
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130

OR2014-05609

Dear Ms. Leal:

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# 518790 (Comal County File No. 14-OR-003).

The Comal County District Attorney's Office (the "district attorney's office") received a request for the personnel file of a named sheriff's office deputy, including training and disciplinary information and all communications and documents related to a specified incident. You inform us you will redact social security numbers in accordance with section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Section 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. Gov't Code § 552.147(b).

²We 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.

Initially, you state the district attorney's office will redact certain information under section 552.130 of the Government Code pursuant to the previous determination issued by our office in Open Records Letter No. 2004-8640 (2004). However, the previous determination in that ruling was issued to the Office of the Attorney General, not the district attorney's office. As such, the district attorney's office may not rely on Open Records Letter No. 2004-8640 as a previous determination to withhold any information. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

Next, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") identification number. 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 TCLEOSE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database and may be used as an access device number on the TCLEOSE website. Accordingly, personal identification numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the TCLEOSE identification number within the submitted information is not subject to the Act and need not be released to the requestor.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) 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:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). We note the submitted information contains a court-filed document subject to subsection 552.022(a)(17), which must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although you raise sections 552.103 and 552.108 of the Government Code for the information at issue, these sections are discretionary exceptions to disclosure and do not make information confidential under the Act. *See 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 Gov't Code § 552.108 subject to waiver). Therefore, you may not withhold the information we have marked subject to subsection 552.022(a)(17) under section 552.103 or section 552.108 of the Government Code. We will consider all of your arguments for the 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 reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the remaining information includes criminal records for a specified offense and personnel file records pertaining to the deputy. Section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. 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* Open Records Decision No. 350 at 3-4 (1982). However, you contend the remaining information pertains to a pending criminal investigation involving the requestor's client and the release of the information at issue would interfere with the investigation or prosecution of crime. We understand the submitted personnel records pertain to the deputy who is involved in the criminal case. Based on your representation and our review, we conclude release of the remaining information 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). 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front-page offense and arrest information in offense report number 13-05-1871, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

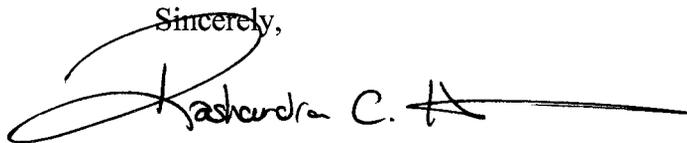
³As our ruling is dispositive, we need not address your remaining argument against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

In summary, the TCLEOSE identification number within the submitted information is not subject to the Act and need not be released to the requestor. With the exception of the basic front-page offense and arrest information in the offense report number 13-05-1871 and the court-filed document subject to subsection 552.022(a)(17), the district attorney's office 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Rashandra C. Hayes", with a long horizontal flourish extending to the right.

Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

Ref: ID# 518790

Enc. Submitted documents

c: Requestor
(w/o enclosures)