



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2014

Sheriff Tom Maddox
Sabine County Sheriff's Office
County of Sabine
P.O. Box 848
Hemphill, Texas 75948

OR2014-07285

Dear Sheriff Maddox:

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# 521400.

The Sabine County Sheriff's Office (the "sheriff's office") received a request for the personnel files of all employees of the sheriff's office, information pertaining to specified incidents, and information pertaining to auction sales. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information contains peace officers' Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") identification numbers. 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 TCELEOSE's electronic database, and may be used as an access device

¹Although you also raise sections 552.101, 552.102, 552.117, 552.1175, 552.119, 552.122, 552.137, 552.150, and 552.152 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

number on the TCLEOSE website. Accordingly, we find the officers' TCLEOSE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCLEOSE identification numbers are not subject to the Act and need not be released to the requestor.

Next, you acknowledge the sheriff's office failed to submit some of the responsive information within the statutory time period prescribed by section 552.301(e) of the Government Code. *See* Gov't Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 for the information at issue, this is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the interests of a governmental body, other than the one that failed to comply with section 552.301, to withhold information under section 552.108 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). You inform us the United States Attorney's Office (the "U.S. Attorney's office") asserts an interest in the submitted information and objects to its release. Therefore, we will consider the whether the information at issue may be withheld on behalf of the U.S. Attorney's office under section 552.108. Further, we will also consider your claimed exception for the timely submitted information.

Next, we note some of the submitted information pertaining to auction sales is subject to section 552.022 of the Government Code, which provides:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under [the Act] or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

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

Gov't Code § 552.022(a)(3), (17). We have marked information subject to subsections 552.022(a)(3) and 552.022(a)(17) which be released unless it is confidential under the Act or other law. Although you and the U.S. Attorney's Office raise section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception to disclosure and does not make information confidential under the Act. *See* ORD177 at 3; *see also* ORD 665 at 2 n.5. However, because section 552.130 of the Government Code makes information confidential under the Act, we will address their applicability to the information subject to section 552.022.² We will also consider the submitted arguments for the information not subject to section 552.022.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the sheriff's office must withhold the information we have marked in the information subject to section 552.022 under section 552.130 of the Government Code.

Section 552.108(a) 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[.]" *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You provide a representation from the U.S. Attorney's office objecting to the release of the information at issue because it concerns a pending criminal investigation and its release would interfere with the investigation. Upon review, we find the submitted personnel files and information related to the specified incidents relate to the pending criminal investigation at issue. Accordingly, section 552.108(a)(1) of the Government Code is applicable to this information. *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 curium*, 536 S.W.2d 559

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(Tex. 1976). However, we find the sheriff's office and U.S. Attorney's office have failed to adequately explain how the release of the remaining information pertaining to auctions sales, which we have marked for release, would interfere with the detection, investigation or prosecution of a crime. Therefore, none of the remaining information at issue may be withheld under section 552.108(a)(1) of the Government Code.

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). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Therefore, with the exception of basic information and the information we have marked for release, the sheriff's office may withhold the remaining submitted information on behalf of the U.S. Attorney's office under section 552.108(a)(1) of the Government Code.

In summary, the TCLEOSE identification numbers are not subject to the Act and need not be released to the requestor. With the exception of the information we have marked under section 552.130 of the Government Code, the sheriff's office must release the information subject to section 552.022 of the Government Code. With the exception of basic information and information we have marked for release, the sheriff's office may withhold the remaining submitted information on behalf of the U.S. Attorney's office 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 521400

Enc. Submitted documents

c: Requestor
(w/o enclosures)