



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2014

Ms. Jennifer Matte
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2014-18917

Dear Ms. Matte:

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# 540655 (C.A. File No. 14PIA0231).

The Harris County Constable's Office, Precinct 7 (the "constable's office") received a request for the complete personnel files of five named officers. You claim the submitted information is exempted from disclosure under sections 552.101, 552.102, 552.108, 552.111, 552.117, and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a police officer's Texas Commission on Law Enforcement ("TCOLE") identification number.² 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

¹Although you originally raised section 552.103 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the requested information. *See* Gov't Code §§ 552.301, .302.

²The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

understand the officer's TCOLE 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 TCOLE website. Accordingly, we find the TCOLE number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE number in 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, which we have marked, is not responsive to the instant request because it pertains to individuals other than those specified in the request. This ruling does not address the public availability of any information that is not responsive to the request, and the constable's office is not required to release such information in response to this request.

We note some of the submitted responsive 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information includes completed evaluations that are subject to section 552.022(a)(1). The constable's office must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(1) under section 552.111 of the Government Code. However, section 552.111 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111). Therefore, the information subject to section 552.022(a)(1) may not be withheld under section 552.111 of the Government Code. However, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, and sections 552.101, 552.102, 552.117, and 552.136 of the Government Code make information confidential under the Act, we will consider your arguments under sections 552.101, 552.102, 552.108, 552.117, and 552.136 for the information subject to section 552.022(a)(1). We will also consider your arguments for the information not subject to section 552.022.

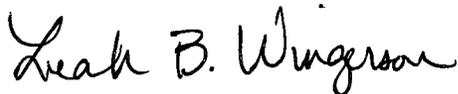
Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

prosecution of crime . . . if . . . 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). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does 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). You state, and have submitted an affidavit from a representative of the constable’s office explaining, the submitted information relates to a specific pending criminal investigation, and release of the information at issue would interfere with the investigation or prosecution of crime. Based upon these representations and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime, and the constable’s office may withhold the responsive information subject to the Act under section 552.108(a)(1). *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). As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/eb

Ref: ID# 540655

Enc. Submitted documents

c: Requestor
(w/o enclosures)