



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2015

Ms. Evelyn W. Kimeu
Staff Attorney
Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2015-05321

Dear Ms. Kimeu:

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# 557092 (HPD ORU No. 14-8400).

The Houston Police Department (the "department") received a request for all reports, complaint records, and all other records, files, writings, and documents pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") 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 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 officer's TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore,

the TCOLE identification number is not subject to the Act and need not be released to the requestor.¹

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of “information that is also contained in a public court record,” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). The search warrants we have marked are subject to section 552.022(a)(17) and must be released unless they are confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022 under section 552.108. However, we note the documents contain information that is subject to section 552.1175 of the Government Code, which makes information confidential under the Act.² Thus, we will address the applicability of section 552.1175 to this information. We will also address your argument under section 552.108 for the information that is 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal investigation by the department and a pending prosecution by the Harris County District Attorney’s Office. Based upon this representation and our review, we conclude release of the information at issue 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 information at issue.

¹As we are able to make this determination, we need not address your argument against the disclosure of this information.

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).

We note, however, section 552.108 of the Government Code does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, the address and social security number of an arrestee. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the submitted information that is not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” Gov’t Code § 552.1175(a)(1). Portions of the basic information and the information that is subject to section 552.022 of the Government Code pertain to a peace officer who is not employed by the department. Thus, to the extent the information we have marked and indicated pertains to a currently licensed peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we have marked and indicated under section 552.1175.³ However, the department must withhold the cellular telephone numbers we have marked only if the cellular telephone service is not paid for with government funds.

In summary, the TCOLE identification number in the submitted information is not subject to the Act and need not be released to the requestor. With the exception of the basic information and the information we have marked that is subject to section 552.022 of the Government Code, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. To the extent the information we have marked and indicated pertains to a currently licensed peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have marked and indicated under section 552.1175 of the Government Code. However, the department must withhold the

³In the event the peace officer’s social security number is not excepted from disclosure under section 552.1175 of the Government Code, we note section 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).

cellular telephone numbers we have marked under section 552.1175 only if the cellular telephone service is not paid for with government funds. The department must release the remaining information that is subject to the Act.

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 that reads "Lindsay E. Hale". The signature is written in a cursive style with a large, looping initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 557092

Enc. Submitted documents

c: Requestor
(w/o enclosures)