



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 29, 2015

Ms. Evelyn Kimeu
Staff Attorney
City of Houston
1200 Travis
Houston, Texas 77002-6000

OR2015-08274

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# 561739 (ORU No. 15-0831).

The Houston Police Department (the "department") received a request for ten categories of information pertaining to the department's policies, training, and other information regarding mental illness. You state the department will release a portion of the requested information. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the information at issue contains a peace 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

¹We 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 that those records contain substantially different types of information than that submitted to this office.

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.

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 TCOLE'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 that we have marked is not subject to the Act and need not be released to the requestor.

Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) 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." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, 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). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, ORDs 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You argue release of Exhibit 3 and the information you have marked in Exhibit 2 would interfere with law enforcement and jeopardize officer safety. Based on your representations and our review, we agree release of some of the information at issue would interfere with law enforcement. However, we find you have failed to demonstrate how the release of the remaining information, including Exhibit 3, would interfere with law enforcement and crime prevention. Accordingly, the department may not withhold any of the information we have marked for release under section 552.108(b)(1). Therefore, except for the information we have marked for release, the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code.

Section 552.122 of the Government Code excepts from public disclosure "[a] test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined the term "test item" in section 552.122

includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated,” but does not encompass evaluations of an employee’s overall job performance or suitability. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold Exhibit 4 under section 552.122. You state the submitted test questions contained in Exhibit 4 are designed to evaluate and measure applicants’ specific objective knowledge of a particular area. You inform us the applicant’s answers to these questions determine whether an officer will be certified in crisis intervention. You state the department uses the same or similar questions in its certification training, and the release of the questions, as well as the answers, would compromise future testing. Having considered your arguments and reviewed the information at issue, we find the submitted questions in Exhibit 4 qualify as test items under section 552.122(b) of the Government Code. We also find the release of the answers to these questions would tend to reveal the questions themselves. However, the remaining information in Exhibit 4, which we have marked for release, does not constitute a test item and may not be withheld under section 552.122(b). Therefore, except for the information we have marked for release, the department may withhold Exhibit 4 under section 552.122(b) of the Government Code.

We note portions of the remaining information are subject to sections 552.102, 552.117, 552.1175, and 552.137 of the Government Code.³ Section 552.102(a) of the Government Code exempts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court has considered the applicability of section 552.102, and has held section 552.102(a) exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 348 (Tex. 2010). Upon review, we find the department must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) exempts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Gov’t Code § 552.117(a)(2). Section 552.117 also encompasses personal cellular telephone and pager numbers, provided a governmental body does not pay

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

for the cellular telephone and pager service. *See* ORD 506 at 5-6 (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone and pager numbers may be withheld only if a governmental body does not pay for the cellular telephone and pager service.

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(b). Section 552.1175 also encompasses a personal cellular telephone or pager number, unless the cellular telephone or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). We have marked the information of a peace officer of another governmental body. To the extent the peace officer elects to restrict access to the information we have marked in accordance with section 552.1175(b), the department must withhold the marked information under section 552.1175 of the Government Code; however, the department may only withhold the marked pager telephone number if the pager service is not paid for by a governmental body. To the extent the peace officer whose information is at issue does not elect to restrict access to the marked information in accordance with section 552.1175(b), the department may not withhold the marked information under section 552.1175 of the Government Code.

Section 552.137 of the Government Code 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 an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the department must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

In summary, the TCOLE identification number we have marked is not subject to the Act and need not be released to the requestor. Except for the information we have marked for release, the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code. Except for the information we have marked for release, the department may withhold Exhibit 4 under section 552.122(b) of the Government Code. The department must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone and

pager numbers may only be withheld if a governmental body does not pay for the cellular telephone and pager service. The department must withhold the information we have marked under section 552.1175 of the Government Code, if the individual whose information is at issue elects to restrict access to the information in accordance with section 552.1175(b); however, the marked pager number may be withheld only if a governmental body does not pay for the pager service. The department must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies. The department must release the remaining information.⁴

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 561739

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information to be released contains social security numbers. 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

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