



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 26, 2015

Ms. Bobbi Kacz
Office of the City Attorney
City of Alvin
216 West Sealy Street
Alvin, Texas 77511

OR2015-10172

Dear Ms. Kacz:

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# 564725 (Ref# CA-15-0023).

The Alvin Police Department (the "department") received two separate requests from the same requestor for (1) all police reports pertaining to the requestor or the requestor's home address and (2) all internal affairs investigation reports pertaining to a specified officer that include the requestor's name. You state the department has provided some of the requested information to the requestor. You indicate the department will redact motor vehicle record information under section 552.130(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.117 of the

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *Id.* § 552.147(b).

Government Code.² We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the Brazoria County Criminal District Attorney's Office (the "district attorney's office"). *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 ("TCOLE") identification numbers.³ 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 a peace officer 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 numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE numbers in the submitted information are not subject to the Act and need not be released to the requestor.

Next, you seek to withhold a portion of the submitted information pursuant to article 39.14 of the Code of Criminal Procedure. We note, however, article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. *See Crim. Proc. Code* art. 39.14. Article 39.14 does not expressly make information confidential for purposes of the Act. *See Open Records Decision* Nos. 658 at 4 (1998) (statutory confidentiality under section 552.101 must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also Open Records Decision* No. 575 at 2 (1990) (explicitly stating discovery privileges are not covered by statutory predecessor to section 552.101). Therefore, we conclude the department may not withhold any of the submitted information under article 39.14 of the Code of Criminal Procedure.

We note the remaining information includes a motion to dismiss signed by a judge. Section 552.022(a)(17) of the Government Code provides for required public disclosure of

²Although you raise section 552.101 of the Government Code in conjunction with section 552.117 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See Open Records Decision* Nos. 676 at 1-2 (2002), 575 at 2 (1990).

³The 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.*

“information that is also contained in a public court record[,]” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although the department claims section 552.108 of the Government Code for the court-filed document, section 552.108 is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the court-filed document under section 552.108 of the Government Code. We note, however, the document contains information subject to section 552.117 of the Government Code. Because section 552.117 makes information confidential under the Act, we will consider the applicability of this exception to the information subject to section 552.022 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 provides information that “relates to a motor vehicle accident reported under [chapter 550]” is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. Transp. Code § 550.065(a)-(b). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). A governmental entity may release information related to a reported accident only in accordance with subsections (c) and (e). *Id.* § 550.065(c), (e). Section 550.065(c)(4) provides a governmental entity shall release such information to a person who provides two of the following three pieces of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific address or the highway or street where the accident occurred. *Id.* § 550.065(c)(4).

In *City of San Antonio v. Abbott*, the court of appeals considered the applicability of section 550.065 to certain information related to an accident. 432 S.W.3d 429 (Tex. App.—Austin 2014, pet. denied). The information at issue consisted of call-for-service and dispatch logs, and the requestor did not provide the requisite information pursuant to section 550.065(c)(4) to obtain the logs. The city argued the plain meaning of the phrase, “information that . . . relates to a motor vehicle accident” in section 550.065 includes *any* information pertaining to an accident reported under chapter 550, and thus, encompasses the information in its logs. Thus, the city contended the logs are confidential because the information relates to motor vehicle accidents reported under chapter 550. The court of appeals agreed with the city’s interpretation of section 550.065. The court held the phrase “relates to” is “very broad” and the Legislature’s use of the phrase “has the effect of broadening the scope of [s]ection 550.065 to render more than the actual accident reports confidential.” *Id.* at 432. Because the court found the language in section 550.065 to be

unambiguous and encompass more than the actual accident report required to be filed under chapter 550, it concluded the city's call-for-service and dispatch logs are confidential under section 550.065(b) of the Transportation Code. Relying on the court's interpretation of the broad scope of section 550.065, we construe the converse to be true when the requestor does provide the requisite information pursuant to section 550.065(c)(4). Thus, based on the court's rationale, when a person provides two of the required pieces of information to a governmental entity, it must release any information that relates to a motor vehicle accident required to be reported under chapter 550. Such a release is not limited to the accident report itself. *Id.* at 433.

A portion of the remaining information consists of an accident report and other law enforcement records that relate to a criminal investigation by the department into a motor vehicle accident that was reported under chapter 550 of the Transportation Code. In this instance, the requestor has not provided the department with two of the three pieces of required information pursuant to section 550.065(c)(4). Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.⁴

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 the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have provided a letter from an assistant district attorney with the district attorney’s office stating the information related to case number 2014-03167 pertains to an ongoing investigation and release of the information would interfere with the detection, investigation, or prosecution of crime. Based on the submitted 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.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is

⁴As our ruling is dispositive, we need not address your arguments against disclosure for this information.

applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. 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 pel.); *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). Further, section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983)*. Where an agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the case of a different law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration that the information relates to the case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information.

You state the remaining information pertains to concluded investigations that did not result in convictions or deferred adjudication. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to the remaining information in Exhibit 4 and the department's criminal investigation information we have marked and indicated. Further, the remaining information includes law enforcement investigation records of the Brazoria County Sheriff's Office (the "sheriff's office"). In its comments submitted to this office, the district attorney's office, on behalf of the sheriff's office, states the information related to case number 1409-0395 pertains to a concluded criminal investigation in which one suspect pled guilty and was convicted, but the charges against the other suspect did not result in a conviction or deferred adjudication. The district attorney's office states the information regarding the investigations of both suspects is intertwined. Thus, we understand the district attorney's office to assert the information relating to the convicted individual and the individual whose charges did not result in a conviction or deferred adjudication is so intertwined that it cannot be easily separated and that release of the information at issue would reveal information relating to the individual whose charges did not result in a conviction or deferred adjudication. Additionally, the district attorney's office states the information related to case number 1402-0179 pertains to a closed criminal investigation that did not result in a conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to the information related to case numbers 1409-0395 and 1402-0179. The remaining information, however, reflects it was generated as part of internal investigations conducted by the department that were purely administrative in nature. Therefore, we find the department has failed to demonstrate the applicability of section 552.108(a)(2) to the remaining information. Accordingly, the department may not withhold any of the remaining information under section 552.108(a)(2) of the Government Code.

We note, 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 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the information related to case number 2014-03167 under section 552.108(a)(1) of the Government Code and the remaining information in Exhibit 4, the department's criminal investigation information we have marked and indicated, and the information related to case numbers 1409-0395 and 1402-0179, on behalf of the sheriff's office, under section 552.108(a)(2) of the Government Code.⁵

We note some of the remaining information is subject to section 552.102(a) of the Government Code, which excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy [.]"⁶ Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts 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 (Tex. 2010). The department must withhold the dates of birth you have marked, and we have marked, under section 552.102(a) of the Government Code.⁷

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, 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 sections 552.024 and 552.1175 of the Government Code. See Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117(a)(2) 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) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). You have marked the information you seek to withhold under section 552.117(a)(2). Upon review, we agree the information you have marked, as well as the additional information we

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, 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).

⁶The 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).

⁷As our ruling is dispositive, we need not address your argument against disclosure for this information.

have marked and indicated, consists of the personal information of peace officers who were employed by the department and the information is held in an employment context. In this instance, however, it is unclear whether the officers at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the department must withhold the information you have marked, as well as the information we have marked and indicated, under section 552.117(a)(2) of the Government Code; however, the cellular telephone numbers we have marked may not be withheld if a governmental body pays for the cellular telephone service. To the extent the individuals whose information is at issue are no longer licensed peace officers as defined by article 2.12, the department may not withhold the information at issue under section 552.117(a)(2) of the Government Code.

To the extent the information at issue pertains to individuals who are no longer licensed peace officers, then the information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(a)(1). We note section 552.117(a)(1) is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See ORD 506* at 5-6. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530* at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals at issue timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information you have marked, as well as the information we have marked and indicated, under section 552.117(a)(1) of the Government Code; however, the cellular telephone numbers we have marked may not be withheld if a governmental body pays for the cellular telephone service. Conversely, if the individuals at issue did not timely request confidentiality under section 552.024, the department may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial*

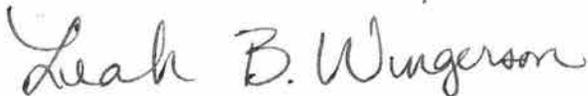
Foundation. Id. at 683. However, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). Although you assert some of the remaining information is protected under common-law privacy, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the submitted TCOLE numbers are not subject to the Act and need not be released to the requestor. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of basic information, the department may withhold the information related to case number 2014-03167 under section 552.108(a)(1) of the Government Code and the remaining information in Exhibit 4, the department's criminal investigation information we have marked and indicated, and the information related to case numbers 1409-0395 and 1402-0179, on behalf of the sheriff's office, under section 552.108(a)(2) of the Government Code. The department must withhold the dates of birth you have marked, and we have marked, under section 552.102(a) of the Government Code. If the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold the information you have marked, and the information we have marked and indicated, under section 552.117(a)(2) of the Government Code. If the individuals whose information is at issue are not currently licensed peace officers, then to the extent the individual made a timely election under section 552.024, the department must withhold the information you have marked, and the information we have marked and indicated, under section 552.117(a)(1) of the Government Code. However, the cellular telephone numbers we have marked may not be withheld under either section 552.117(a)(1) or section 552.117(a)(2) of the Government Code if a governmental body pays for the cellular telephone service. The department must release the remaining information.

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 cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 564725

Enc. Submitted documents

c: Requestor
(w/o enclosures)