



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2015

Mr. Zachary Noblitt
Assistant City Attorney
City of Dallas
1500 Manila Street, Room 7DN
Dallas, Texas 75201

OR2015-17278

Dear Mr. Noblitt:

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# 575949 (DPD Request No. 2015-09391).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident and information pertaining to a named former department officer. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions 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. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). 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. 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 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. Thus, we find the officer's TCOLE number does not constitute public information under section 552.002 of the Government Code. Therefore, the officer's TCOLE number is not subject to the Act and need not be released to the requestor.

You state some of the requested information was the subject of previous requests for rulings, as a result of which this office issued Open Records Letter Nos. 2015-08621 (2015) and 2015-10026 (2015). In Open Records Letter No. 2015-10026, we determined the department must continue to rely on Open Records Letter Nos. 2015-08156 (2015) and 2015-08621 as previous determinations and withhold or release the information at issue in accordance with those rulings; the department must withhold certain information under section 552.101 of the Government Code in conjunction with (1) section 58.007(c) of the Family Code, (2) section 159.002 of the Occupations Code, (3) section 411.083 of the Government Code and federal law, (4) section 560.003 of the Government Code, and (5) common-law privacy; the department must withhold certain information under sections 552.130 and 552.136 of the Government Code; the department may withhold certain information under section 552.147 of the Government Code; and the department must release the remaining information. In Open Records Letter No. 2015-08621, we determined the department must withhold the information at issue in under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, the department must continue to rely on Open Records Letter Nos. 2015-08156 and 2015-10026 as previous determinations and withhold or release the

information at issue in accordance with those rulings.¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your arguments for the submitted information not subject to the previous rulings.

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. This exception encompasses section 58.007 of the Family Code, which provides, in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the information submitted as Exhibit C involves juvenile delinquent conduct that occurred after September 1, 1997. Further, it does not appear that any of the exceptions in section 58.007 apply to this information. Accordingly, the department must withhold Exhibit

¹As our ruling is dispositive, we need not address your arguments against disclosure of this information.

C in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

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)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit B pertains to a pending criminal investigation and prosecution. Based on this representation, we conclude section 552.108(a)(1) is applicable to Exhibit B. *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). Accordingly, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code.³

Section 552.102(a) of the Government Code excepts 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 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, 348 (Tex. 2010). Upon review, we find the department must withhold the dates of birth you have marked and the dates of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See Gov’t Code* § 552.117(a); Open Records Decision No. 622 (1994). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5* (1989). Thus, information may only be withheld under section 552.117(a)(1) 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. We have marked the personal information of the former officer. You inform us, and provide documentation showing, that the former officer timely elected confidentiality under section 552.024.

²As our ruling on this information is dispositive, we need not address your argument against its disclosure.

³As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

Therefore, the department must withhold the information you have marked and the information we have marked under section 552.117(a)(1) of the Government Code.⁴

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You state the employee identification numbers you have marked are used in conjunction with one additional digit to access credit union bank accounts. Thus, the department must withhold the employee identification numbers you have marked, and the employee identification numbers we have marked, under section 552.136 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 id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, the department must continue to rely on Open Records Letter Nos. 2015-08156 and 2015-10026 as previous determinations and withhold or release the information at issue in accordance with those rulings. The department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department may withhold Exhibit B under section 552.108(a)(1) of the Government Code. The department must withhold the dates of birth you have marked and the dates of birth we have marked under section 552.102(a) of the Government Code. The department must withhold the information you have marked and the information we have marked under section 552.117(a)(1) of the Government Code. The department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The department must withhold the employee identification numbers you have marked, and the employee identification numbers we have marked, under

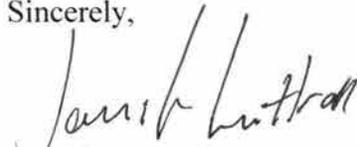
⁴As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

section 552.136 of the Government Code. The department must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 575949

Enc. Submitted documents

c: Requestor
(w/o enclosures)