



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 9, 2015

Mr. James Santangelo
Assistant City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2015-25767

Dear Mr. Santangelo:

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# 590048.

The Missouri City Police Department (the "department") received a request for all records for five named department officers and two named detectives. You claim a portion of the submitted information is not subject to the Act. You claim the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.114, 552.115, 552.117, 552.119, 552.122, 552.130, 552.136, 552.137, and 552.147 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

Initially, you assert the submitted school transcripts are subject to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the

¹Although you raise section 552.1175 of the Government Code, we note section 552.117 is the proper exception to raise for information the department holds in an employment capacity.

open records ruling process under the Act.² Consequently, education records that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). We note the department is not an educational agency or institution for purposes of FERPA. The department states it received the transcripts directly from the identified school district or the institutions of higher education at issue. Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address FERPA with respect to those records. Such determinations under FERPA must be made by the educational authority from which the records were obtained. Thus, the department should contact any educational institutions from which the transcripts were obtained, as well as the DOE, regarding the applicability of FERPA to this information.

Next, you state, and we agree, the submitted information contains peace officers’ Texas Commission on Law Enforcement (“TCOLE”) identification numbers. 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. We understand an officer’s TCOLE identification number is a unique computer-generated number assigned to peace

²A copy of this letter may be found on the Office of the Attorney General’s website: http://www.oag.state.tx.us/opinopen/og_resources.shtml.

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 officers' TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.

We note the submitted information contains information subject to section 552.022 of the Government Code, which 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[and]

...

(17) information that is also contained in a public court record[.]

Id. § 552.022(a)(1), (17). The submitted information contains completed evaluations and reports which are subject to section 552.022(a)(1) and a court-filed document that is subject to section 552.022(a)(17). The department must release the information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(17). The department must release the information subject to section 552.022(a)(17), which we have marked, unless it is made confidential under the Act or other law. *See id.* Although you seek to withhold the information subject to section 552.022 under section 552.103 of the Government Code, and the information subject to section 552.022(a)(17) under section 552.108 of the Government Code, these sections are discretionary exceptions to disclosure and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* 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 information subject to section 552.022 under section 552.103 or the court-filed document under section 552.108 of the Government Code. Further, although the department raises section 552.101 of the Government Code in conjunction with common-law privacy for the court-filed document, we note common-law privacy is not applicable to information contained in public records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Thus, the department may not withhold any portion of the court-filed document

under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department also raises section 552.117 of the Government Code for the court-filed document, which makes information confidential under the Act. Accordingly, we will address the applicability of this section to the information at issue. Further, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address the department's assertion of section 552.108 for the information subject to section 552.022(a)(1). Additionally, we will address the department's arguments 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). Generally, 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 the remaining information relates to an ongoing criminal prosecution. Further, you state the information at issue pertains to the arresting officers and the officers’ supervisor who were involved in the case at issue in the pending prosecution. You state release of this information could be used to impeach the credibility of the officers’ and supervisor’s testimony at trial. Based upon your representation and our review, we conclude that the 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, with the exception of the information subject to section 552.022(a)(17) of the Government Code, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.⁴ Gov’t Code § 552.117(a)(2). Upon review, we find the department must withhold the information we have marked in the information subject to section 552.022(a)(17) under section 552.117(a)(2) of the Government Code.

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

⁴Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

In summary, the department should contact the educational institution from which it obtained the transcripts, as well as the DOE, regarding the applicability of FERPA to those documents. The TCOLE identification numbers are not subject to the Act and need not be released. The department must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. In releasing the court-filed document, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 590084

Enc. Submitted documents

c: Requestor
(w/o enclosures)