



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 21, 2016

Mr. Laurence E. Boyd  
Counsel for the City of Iowa Colony  
P.O. Box 269  
Angleton, Texas 77516-0269

OR2016-14035

Dear Mr. Boyd:

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# 615017.

The City of Iowa Colony (the "city"), which you represent, received a request for the personnel file of a named officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.115, 552.117, 552.136, 552.137, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

The city argues some of the submitted information is 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 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 open records ruling process under the Act.<sup>2</sup> See 34 C.F.R. § 99.3 (defining "personally

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<sup>1</sup>Although you raise section 552.1175 of the Government Code, we note section 552.117 is the proper exception to raise for information held in an employment context.

<sup>2</sup>A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

identifiable information”). FERPA governs the availability of student records held by educational institutions or agencies receiving federal funds, and applies only to student records in the custody of educational institutions and to records directly transferred from the educational institution to the third party. *Id.* § 99.33(a)(2). The city is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an “educational agency” for purposes of FERPA). Further, we have no indication any portion of the information at issue was transferred directly to the city from an educational institution. Therefore, we conclude the city may not withhold any of the submitted information on the basis of FERPA.

Next, 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. 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 is not subject to the Act and need not be released to the requestor.

Next, 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:

...

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

*Id.* § 552.022(a)(17). The submitted information contains a court-filed document that is subject to section 552.022(a)(17). The city 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 the city seeks to withhold the information subject to section 552.022 under sections 552.103 and 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 city may not withhold the information subject to section 552.022 under section 552.103 or section 552.108 of the Government Code. Further, although the city asserts this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As such, the city may not withhold the information that is subject to section 552.022(a)(17) under section 552.101 in conjunction with common-law privacy. However, the city also raises sections 552.101, 552.117, 552.130, and 552.136 of the Government Code for the court-filed documents, which make information confidential under the Act. Accordingly, we will address the applicability of these sections to the information at issue. Additionally, we will address the 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). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(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).

Section 552.108(a)(1) is generally not applicable to internal personnel records that are purely administrative in nature and that do 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 pet.); *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); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state the submitted information consists of the personnel file of the arresting officer in a pending criminal investigation, and release of the information at issue would interfere with the detection, investigation, and 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 describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations, we find the city may withhold the submitted information not subject to section 552.022(a)(17) under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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. Therefore, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

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 id.* § 552.130(a). The city must withhold the motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.

Section 552.136 of the Government Code states “Notwithstanding 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”). Upon review, we find the city must withhold the information we have marked in the remaining information under section 552.136 of the Government Code.

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. The city may withhold the information not subject to

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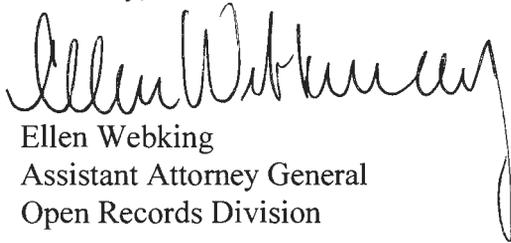
<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

section 552.022(a)(17) under section 552.108(a)(1) of the Government Code. In releasing the court-filed documents pursuant to section 552.022(a)(17), the city must withhold: (1) the information we have marked under section 552.117(a)(2) of the Government Code; (2) the motor vehicle record information we have marked under section 552.130 of the Government Code; and (3) the information we have marked under section 552.136 of the Government Code. The city 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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/bw

Ref: ID# 615017

Enc. Submitted documents

c: Requestor  
(w/o enclosures)