



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2016

Ms. Kristen Lee
Assistant County Attorney
Harris County
1019 Congress Street, 15th Floor
Houston, Texas 77002

OR2016-16353

Dear Ms. Lee:

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# 620018 (C.A. File Ho. 16PIA0254).

The Office of the Harris County Constable, Precinct Five (the "constable's office") received a request for information pertaining to a specified investigation and a named officer, including the officer's name, date of hire, race, and gender. The constable's office claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the constable's office only submitted several personnel records relating to the named officer. We assume, to the extent any additional responsive information existed when the constable's office received the request for information, the constable's office has released it to the requestor. If not, then the constable's office must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Next, we note the submitted information contains the requested name, sex, ethnicity, and date of employment of the named officer. Section 552.022(a)(2) of the Government Code provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2). Although the constable's office asserts the information subject to section 552.022(a)(2), which we have marked, is excepted from disclosure under section 552.108, section 552.108 is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the constable's office may not withhold the information subject to section 552.022 under section 552.108. Accordingly, the constable's office must release the information we have marked under section 552.022(a)(2) of the Government Code.

The constable's office asserts the remaining information is excepted from release under section 552.108(a) of the Government Code, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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 explain how and why the release of the information at issue 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, 710 (Tex. 1977). Section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency's personnel records); *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. 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); Open Records Decision No. 350 at 3-4 (1982). The constable's office states the remaining information relates to an ongoing criminal case in which the named officer may be called as a witness. Based on these representations and our review, we conclude 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the constable's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

To conclude, the constable's office must release the information we have marked under section 552.022(a)(2) of the Government Code. The constable's office 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 620018

Enc. Submitted documents

c: Requestor
(w/o enclosures)