



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2011

Mr. John A. Peralta
Assistant County Attorney
Liberty County
P.O. Box 9127
Liberty County, Texas 77575

OR2011-19065

Dear Mr. Peralta:

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# 440377.

The Liberty County Sheriff's Office (the "sheriff") received a request for ten categories of information pertaining to a specified investigation. You state you will release most of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.117, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹Although you raise sections 552.103 and 552.107 of the Government Code as exceptions to disclosure in your initial brief, you have provided no arguments regarding the applicability of these sections. We, therefore, assume you no longer assert sections 552.103 and 552.107. *See* Gov't Code §§ 552.301(b), (e), .302. We note the sheriff did not raise section 552.117 of the Government Code as an exception to disclosure within ten business days of the date the sheriff received the request. *See id.* § 552.301(b), .302. However, because section 552.117 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will consider your claim under section 552.117, notwithstanding the sheriff's violation of section 552.301(b) in raising that exception. *See id.* § 552.302.

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 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(1) generally only applies to information that pertains to criminal investigations or prosecutions that are currently pending. You generally state the submitted information contains communications pertaining to active criminal investigations. However, you do not inform us how the submitted information pertains to specific ongoing criminal investigations. Further, you have failed to explain how the release of the submitted information would interfere in some way with the detection, investigation, or prosecution of a particular crime. Thus, the sheriff may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” *Id.* at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* You inform us that the submitted information contains the cellular telephone numbers of sheriff officers. You assert that the release of these cellular telephone numbers would interfere with law enforcement and crime prevention. Based on your representations, we conclude that the sheriff may withhold the submitted cellular telephone numbers of sheriff officers under section 552.108(b)(1) of the Government Code.

Next, we address your argument that some of the remaining information is excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public 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 and 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). We note that section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 670 at 6 (2001). Accordingly, if the remaining submitted information contains the home or personal cellular telephone numbers of sheriff officers or their family members, then the sheriff must withhold this information under section 552.117(a)(2) of the Government Code.

We note section 552.1175 may apply to some of the information at issue.² Section 552.1175 applies to information held by a governmental body concerning the following individuals:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code;
- (5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;
- (6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);
- (7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure; and
- (8) police officers and inspectors of the United States Federal Protective Service.
- (9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.1175(a). If the remaining submitted information concerns an individual listed in section 552.1175(a), then section 552.1175(b) provides:

(b) [T]he home telephone number . . . of an individual to whom this section applies . . . is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(a), (b). We note section 552.1175 also excepts from disclosure personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6 (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, to the extent the remaining submitted information relates to an individual who is covered by section 552.1175(a), then the sheriff must withhold the individual's home and personal cellular telephone numbers under section 552.1175(b), provided that individual chooses to restrict access to that information and properly notifies the sheriff of that decision.

Section 552.136 of the Government Code provides in part that “[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”). Upon review, we find the sheriff must withhold the cellular telephone account numbers, a representative sample of which we have marked, under section 552.136 of the Government Code.

In summary, the sheriff may withhold the submitted cellular telephone numbers of sheriff officers under section 552.108(b)(1) of the Government Code. If the remaining submitted information contains the home or personal cellular telephone numbers of sheriff officers or their family members, then the sheriff must withhold this information under section 552.117(a)(2) of the Government Code. To the extent the remaining submitted information relates to an individual who is covered by section 552.1175(a) of the Government Code, then the sheriff must withhold the individual's home or personal cellular telephone numbers under section 552.1175(b), provided that individual chooses to restrict access to that information and properly notifies the sheriff of that decision. The sheriff must withhold the cellular telephone account numbers, a representative sample of which we have marked, under section 552.136 of the Government Code. The remaining information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bs

Ref: ID# 440377

Enc. Submitted documents

c: Requestor
(w/o enclosures)