



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2012

Mr. Tommy L. Coleman
Assistant District Attorney
Williamson County
405 M.L.K., No. 1
Georgetown, Texas 78626

OR2012-05297

Dear Mr. Coleman:

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# 450529.

Williamson County (the "county") received a request for all correspondence between a named individual and the county commissioners for a specified time period and another request from the same requestor for a copy of the named individual's last paycheck and information pertaining to the individual's termination or resignation.¹ You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the

¹We note the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the county seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential under the Act. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37 (providing for "confidentiality" of information under specified exceptions). Therefore, the court-filed document we have marked may not be withheld under section 552.108. We note some of the information encompassed by section 552.022 falls within the scope of sections 552.117, 552.130, and 552.136 of the Government Code, which make information confidential under the Act.² Accordingly, we will address the applicability of these exceptions to the information encompassed by section 552.022. Additionally, we will address your claim under section 552.108 for the remaining information at issue.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024, the county must withhold the information we have marked under section 552.117(a)(1). Conversely, if the individual at issue did not timely request confidentiality under section 552.024, the county may not withhold the marked information under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(2). Accordingly, the county must withhold the motor vehicle record information we have marked in the information subject to section 552.022 under section 552.130 of the Government Code.

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

Section 552.136 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”). Upon review, we find the county must withhold the information we have marked in the remaining records subject to section 552.022 under section 552.136 of the Government Code.

Next, we address your claim under section 552.108 of the Government Code for the responsive information that is not encompassed by section 552.022(a)(17). Section 552.108(a)(1) 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 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). You state the remaining information relates to an open criminal investigation and prosecution. Based upon your representation, we conclude release of the information at issue will 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). Accordingly, we find the county may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, with regards to the information we marked as being subject to section 552.022(a)(17) of the Government Code, the county must (1) withhold the information we have marked under section 552.117(a)(1) of the Government Code if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, (2) withhold the information we have marked under section 552.130 of the Government Code, (3) withhold the information we have marked under section 552.136 of the Government Code, and (4) release the remaining information subject to section 552.022. The county 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.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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a large loop at the end.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 450529

Enc. Submitted documents

cc: Requestor
(w/o enclosures)