



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2012

Chief Richard Clemmo
Kemp Police Department
P.O. Box 449
Kemp, Texas 75143-0449

OR2012-05585

Dear Chief Clemmo:

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# 451057.

The Kemp Police Department (the "department") received a request for (1) each department officer's Texas Commission on Law Enforcement Officers Standards and Education ("TCLEOSE") education information, service history, total service time, award information, and course completed information for the entirety of their career; and (2) a copy the detailed billing the department's city owned telephones for the years 2010 through 2012, and the department telephone numbers associated with the chief, a sergeant, and patrol. We understand you to claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address your assertion that the information responsive to item 1 of the request is available through TCLEOSE, because TCLEOSE is "the custodian of records for licensing." The Act generally does not require a governmental body to obtain information not in its possession. *See Open Records Decision Nos. 558 at 2 (1990)* (Act not applicable if governmental body does not have right of access to or ownership of information prepared for it by an outside entity), 445 at 2 (1986) (Act not applicable to information governmental

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

body never possessed or was entitled to receive). However, a governmental body must make a good-faith effort to relate a request to any responsive information within its possession or control. Open Records Decision No. 561 at 8-9 (1990). We assume the department has made a good-faith effort to do so. Therefore, to the extent any information responsive to this portion of the request existed on the date the department received the request, we presume the department has released it. If not, the department must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to the requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We understand you to seek to withhold the telephone numbers of members of the public in the submitted information under common-law privacy. We note that this is not the type of information that has been found to be highly intimate or embarrassing and of no legitimate public concern. *See* Open Records Decision Nos. 554 at 3 (1990) (public disclosure of an individual's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as “intimate aspects of human affairs”). Therefore, the department may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). 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.” ORD 506 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 state the information at issue contains the cellular telephone numbers of law enforcement officers. You argue release of the information at issue would hamper ongoing investigations. Therefore, to the extent the telephone numbers in the submitted information constitute the work cellular telephone numbers of department officers, they may be withheld under section 552.108(b)(1) of the Government Code.

The remaining information contains account numbers. Section 552.136(b) of the Government Code states “[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.” Gov’t Code § 552.136(b). Therefore, the department must withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, to the extent the telephone numbers in the submitted information constitute the work cellular telephone numbers of department officers, they may be withheld under section 552.108(b)(1) of the Government Code. The department must withhold the account numbers 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 451057

Enc. Submitted documents

c: Requestor
(w/o enclosures)