



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2012

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2012-11970

Dear Ms. Lentz:

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# 460645.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to the requestor. We note you have marked social security numbers that do not belong to the requestor for redaction under section 552.147 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.108, 552.130, 552.137, and 552.152 of the Government Code.² We have

¹Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without requesting a decision. Gov't Code § 552.147(b). As you acknowledge, the requestor has a right to her own social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

²Although you do not raise section 552.147 of the Government Code in your brief, we understand you to raise this exception based on your markings in the submitted information.

considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note some of the submitted information is not responsive to the instant request because it was created after the date the sheriff's office received the request. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.

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). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

We understand you to argue the responsive information consists of internal records or notations of a law enforcement agency or prosecutor that are maintained for internal use in matters related to law enforcement or prosecution. Upon review, we find you have failed to demonstrate how the release of the information at issue would interfere with law enforcement or crime prevention. Thus, the sheriff's office may not withhold the responsive information under section 552.108(b)(1) of the Government Code.

³We 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.

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 and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked relates to an ongoing criminal investigation. Based on your representation and our review, we conclude release of the information you have marked would interfere with the detection, investigation, or prosecution of a 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 per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, section 552.108(a)(1) of the Government Code is applicable to the information you have marked.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked relates to cases where no arrests were made and no criminal charges were pursued or arrests were made but criminal charges were subsequently dismissed. You explain these cases did not result in conviction or deferred adjudication. Accordingly, section 552.108(a)(2) of the Government Code is applicable to the information you have marked.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff’s office may withhold the information you have marked under section 552.108(a)(1) of the Government Code and the information you have marked under section 552.108(a)(2) of the Government Code.⁴

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against its release.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”⁵ Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 611.002 of the Health and Safety Code. Section 611.002 of the Health and Safety Code applies to “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” Health & Safety Code § 611.002. Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, .005; Open Records Decision No. 565 (1990). We have marked the requestor’s mental health records. This information may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. *See* Health & Safety Code § 611.004(a)(4) (professional may disclose confidential information to person who has patient’s written consent).

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. Section 552.1175 also encompasses a cellular telephone number, if the cellular service is not paid for by a governmental body. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure.” *Id.* § 552.1175(a)(1). We have marked the cellular telephone number of a Texas Department of Public Safety Criminal Investigation Division officer. If this individual is currently a licensed peace officer and he elects to restrict access to his cellular telephone number in accordance with section 552.1175(b), the sheriff’s office must withhold the marked cellular telephone number under section 552.1175 of the Government Code if the cellular service is not paid for by a governmental body.

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 issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. As you acknowledge, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

request information concerning themselves). Accordingly, the sheriff's office must withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). As you acknowledge, the requestor has a right of access to her own e-mail address under section 552.137(b). *See id.* § 552.137(b). We agree the sheriff's office must withhold the e-mail address you have marked under section 552.137 of the Government Code unless the owner of the e-mail address consents to its release.

Section 552.152 of the Government Code provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You state the information you have marked under section 552.152 identifies a deputy of the sheriff's office who was working undercover. You seek to withhold the deputy's identifying information from the remaining responsive documents. You represent to this office that the release of the deputy's identifying information would subject this officer to a substantial threat of physical harm. Based on your representations, we find the sheriff's office has demonstrated that release of the information at issue would subject the officer to a substantial threat of physical harm. Accordingly, we conclude the sheriff's office must withhold the information you have marked under section 552.152 of the Government Code.

In summary, except for the basic information, the sheriff's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code and the information you have marked under section 552.108(a)(2) of the Government Code. The marked mental health records may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. If the Texas Department of Public Safety Criminal Investigation Division officer is currently a license peace officer and he elects to restrict access to his cellular telephone number in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold the marked cellular telephone number under section 552.1175 of the Government Code if the cellular service is not paid for by a governmental body. The sheriff's office must withhold the marked information under section 552.130 of the Government Code. The sheriff's office must withhold the

marked e-mail address under section 552.137 of the Government Code unless its owner consents to its release. The remaining responsive information must be released.⁶

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 460645

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶Because the requestor has a right of access to some of the information being released in this instance, if the sheriff's office receives another request for this same information from a different requestor, it must again seek a ruling from this office.