



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2013

Mr. Michael Shaunessy
Counsel for Llano County Sheriff's Office
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OR2013-0344

Dear Mr. Shaunessy:

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# 475310.

The Llano County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information pertaining to (1) two named employees; (2) the sheriff's office's liability insurance policies; and (3) federal funds received by the sheriff's office. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.115, 552.117, 552.1175, 552.130, and 552.136 of the Government Code.¹ Additionally, you state release of this information may implicate third party interests. Accordingly, you have notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released). We have received comments

¹Although you initially raised section 552.107 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5, you have not submitted any arguments explaining how these provisions apply to the submitted information. Therefore, we assume you have withdrawn these provisions. *See* Gov't Code §§ 552.301, .302.

from the interested third parties. We have considered the arguments and reviewed the submitted representative sample of information.²

Initially, we note you have submitted information that falls outside the scope of the categories of information requested. Therefore, this information, which we have marked, is not responsive to the present request. The sheriff's office need not release non-responsive information in response to the request, and this ruling will not address that information.

Next, we note requested item three is the subject of litigation pending against our office: *Llano County v. Abbott*, No. D-1-GV-12-001708 (200th Dist. Ct., Travis County, Tex., filed Nov. 29, 2012.) Accordingly, we decline to issue a decision regarding the information at issue and will allow the trial court to resolve the issue of whether this information must be released to the public.

You state you have submitted a representative sample of information; however, no portion of the submitted representative sample pertains to the requested liability insurance policies. Thus, we find the submitted information is not representative of all the information sought in the request for information. Please be advised this ruling applies to only the types of information you have submitted for our review. Therefore, this ruling 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. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed public). To the extent any information responsive to the portion of the request seeking liability insurance policies was maintained by the sheriff's office on the date the sheriff's office received the request for information, we assume the sheriff's office has released it. If the sheriff's office has not released any such information, it must do so at this time. *See id.* §§ 552.301-.302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release information as soon as possible).

Next, we must address the sheriff's office's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). While you raised sections 552.101, 552.103, 552.115, 552.117, 552.130, and 552.136 of the Government Code within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.108 of the Government Code until after the ten-business-day deadline had passed. Thus, the sheriff's office failed to comply with the requirements mandated by

²We 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 those submitted to this office.

subsection 552.301(b) as to its argument under section 552.108 of the Government Code. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to timely raise section 552.108 for the requested information, the sheriff's office has waived its argument under that section. Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See Open Records Decision No. 586 at 2-3* (1991). We have received a representation from the Office of the Attorney General (the "OAG") that asserts the submitted responsive information is excepted from disclosure under section 552.108 of the Government Code. Therefore, we will consider whether the information at issue may be withheld under section 552.108 on behalf of the OAG. We will also consider your timely raised arguments against disclosure under sections 552.101, 552.103, 552.115, 552.117, 552.1175, 552.130, and 552.136 of the Government Code for the submitted information.

We note the submitted information contains the agenda and minutes of public meetings of the Llano County Commissioners Court. The agenda and minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See Gov't Code* §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Although you and the OAG respectively raise sections 552.103 and 552.108 for this information, we note, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See Open Records Decision Nos. 623 at 3* (1994), 525 at 3 (1989). Accordingly, the submitted agenda and minutes of the public meetings, which we have marked, must be released pursuant to sections 551.022 and 551.041 of the Government Code.

We next note some of the responsive information consists of information subject to section 552.022. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). The responsive information contains payroll change notice forms that fall within the purview of section 552.022(a)(3) and court-filed documents subject to section 552.022(a)(17). The sheriff's office must release information subject to section 552.022(a)(3) and section 552.022(a)(17) unless the information is made confidential under the Act or other law. *Id.* Although you seek to withhold this information under section 552.103 and the OAG seeks to withhold this information under section 552.108 of the Government Code, sections 552.103 and 552.108 are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 at 3; *see also* ORD 665 at 2 n.5. Therefore, the information subject to section 552.022, which we have marked, may not be withheld under section 552.103 or section 552.108 of the Government Code. You raise sections 552.117 and 552.1175 for portions of this information. Because sections 552.117 and 552.1175 make information confidential under the Act, we will consider the applicability of these exceptions to the information at issue. We will also consider all of your timely raised arguments and the OAG's argument under section 552.108 for the information not subject to section 552.022 of the Government Code.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information 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 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You inform us the submitted information pertains to a pending criminal case with the OAG. We have received a representation from the OAG objecting to release of this information because it relates to an open and active prosecution and its release would interfere with a case pending with the OAG's Criminal Prosecutions Division. *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 curium*, 536 S.W.2d 559 (Tex. 1976). Based on these representations, we conclude section 552.108(a)(1) is applicable to the information not subject to section 552.022. Thus, the sheriff's office may withhold the information at issue under section 552.108(a)(1) of the Government Code on behalf of the OAG.³

As previously noted, portions of the information subject to section 552.022 may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individuals whose information is at issue are currently licensed peace officers, the sheriff's office must withhold the information we have marked under section 552.117(a)(2).

To the extent the individuals whose information is at issue are not currently licensed peace officers, their personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) protects from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of current or former officials or employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We note, although the submitted information contains the election forms for both individuals, only one of the forms allows the individual to elect as confidential the personal information that is at issue in the remaining information. Thus, only one of the individuals has timely elected to keep confidential the personal information at issue. Accordingly, if this individual is not a currently licensed peace officer, the sheriff's office must withhold his personal information under section 552.117(a)(1) of the Government Code.⁴ However, because the second

³As section 552.108 is dispositive, we need not address your other arguments against disclosure of this information.

⁴As section 552.117 is dispositive, we need not address your argument under section 552.1175 of the Government Code for this information.

individual has not timely elected to withhold his social security number, his information may not be withheld under section 552.117(a)(1).⁵

In summary, we decline to issue a decision regarding requested item three and will allow the trial court to resolve the issue of whether this information must be released to the public. The sheriff's office must release the submitted public meeting agenda and minutes, which we have marked, pursuant to sections 551.022 and 551.041 of the Government Code. The sheriff's office may withhold the information not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code on behalf of the OAG. To the extent the individuals whose information is at issue are currently licensed peace officers, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individual who timely elected confidentiality is not a currently licensed peace officer, the sheriff's office must withhold his personal information under section 552.117(a)(1) of the Government Code. The remaining responsive 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

⁵Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

Ref: ID# 475310

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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