



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2014

Ms. Erin A. Higginbotham  
Counsel for the City of Pflugerville  
Denton, Navarro, Rocha, Bernal, Hyde, & Zech, P.C.  
2500 West William Cannon, Suite 609  
Austin, Texas 78745-5320

OR2014-11158

Dear Ms. Higginbotham:

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# 527441 (City Reference No. W001154-040914).

The City of Pflugerville (the "city"), which you represent, received a request for personnel file documents pertaining to a named officer. You state the city will redact motor vehicle record information under section 552.130(c) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, and 552.137 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the city has no information directly responsive to the request because the requestor seeks the civil service file of the named officer pursuant to section 143.089(a) of the Local Government Code, and you inform us the city is not a civil service city as defined under chapter 143 of the Local Government Code. However, you state the city has made a

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

<sup>2</sup>Although you do not raise sections 552.117 and 552.137 of the Government Code in your brief, we understand you to raise these exceptions based on your markings.

good-faith effort to compare the types of information the requestor seeks with the information the city does maintain. The Act requires the governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because you have submitted the information for our review and raised exceptions to disclosure for the information, we find the city has made a good-faith effort to submit information that is responsive to the request.

Next, we note the submitted information contains a police officer's Texas Commission on Law Enforcement ("TCOLE") identification number. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the TCOLE number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE number in the submitted information is not subject to the Act and need not be released to the requestor.

You state some of the remaining information was been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-11016 (2014). We have no indication the law, facts, and circumstances on which Open Records Letter No. 2014-11016 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the city must continue to rely on Open Records Letter No. 2014-11016 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the remaining information is not encompassed by the previous ruling, we will address your arguments against its release.

We note portions of the remaining information consist of completed evaluations and investigations subject to section 552.022(a)(1) of the Government Code. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public

information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The city must release the completed evaluations and investigations pursuant to subsection 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold this information under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception and does not make information confidential under the Act. *See 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 Gov't Code § 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, this information may not be withheld under section 552.103 of the Government Code. However, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your argument under section 552.108 for this information. Additionally, as sections 552.101, 552.117, and 552.137 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the remaining information. Furthermore, we will consider your argument under section 552.103 for the information not subject to section 552.022(a)(1).

You claim the remaining information is excepted from disclosure under section 552.108(b)(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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You assert the remaining information pertains to a pending criminal prosecution. You state the remaining information deals with documents in the personnel file of the named officer who is a witness in the case. You represent such information can be used for impeachment purposes and can interfere with the case. Based on your representations and our review, we conclude the release of the remaining information would 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). Thus, the city may withhold the remaining information under section 552.108(b)(1) of the Government Code.<sup>3</sup>

In summary, the TCOLE number in the submitted information is not subject to the Act and need not be released to the requestor. With regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the city must continue to rely on Open Records Letter No. 2014-11016 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The city may withhold the remaining information under section 552.108(b)(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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/bhf

Ref: ID# 527441

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.