



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2014

Mr. John K. McKinney, Jr.
Assistant County Attorney
County of Montgomery
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2014-21694

Dear Mr. McKinney:

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# 545276 (ORR File 14PIA0423).

The Montgomery County Constable's Office, Precinct 4 (the "constable's office") received a request for personnel information pertaining to eight named officers. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the requestor specifies she is not seeking certain information, including L-2 and L-3 forms, family member and marital status information, financial information, medical records, fingerprints, insurance information, military records, birth certificates, test questions and answers, physician information, blood type, emergency contact information, health

¹Although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we presume you have withdrawn your claim this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

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 that those records contain substantially different types of information than that submitted to this office.

insurance and retirement enrollment forms, time off requests, social security numbers, dates of birth, home addresses and telephone numbers, and driver's license numbers. Thus, these portions of the requested information are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the constable's office is not required to release any such information in response to the request.³

Next, we note the submitted information contains peace officer Texas Commission on Law Enforcement ("TCOLE") identification numbers.⁴ 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 an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the officers' TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.⁵

Next, we note portions of the responsive information may have been previously released in response to a previous request for information. We note section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the constable's office may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory

³As our ruling is dispositive, we need not address your arguments, including section 552.1175, against disclosure of this information.

⁴The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

⁵As we are able to make this determination, we need not address your arguments against the disclosure of this information.

predecessor to section 552.108 subject to waiver). Thus, to the extent the constable's office has previously released any of the information at issue, the constable's office may not now withhold such information under section 552.108. However, to the extent the information at issue was not previously released, we will address your claim under section 552.108 for this information.

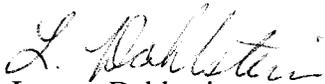
Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the submitted information consists of personnel file records pertaining to peace officers. Section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you inform us, and provide documentation from the Montgomery County District Attorney's Office demonstrating, the submitted information pertains to ongoing criminal cases based upon investigations by the named officers and the release of the information at issue would interfere with the prosecution of crime. Based on this representation, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime, and it may be withheld under section 552.108(a)(1). *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).

In summary, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor. To the extent the constable's office has previously released any of the responsive information, the constable's office must release the previously released responsive information. The constable's office may withhold the remaining responsive information that is subject to the Act 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.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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 545276

Enc. Submitted documents

c: Requestor
(w/o enclosures)