



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2014

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2014-22570

Dear Ms. Winn:

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# 546678.

The Travis County Sheriff's Office (the "sheriff's office") received a request for all communications and correspondence retained by the sheriff's office or the Austin Regional Intelligence Center that contain any of seven specified terms. You claim the submitted information is excepted from disclosure under sections 552.108, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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

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

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

...

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

Gov't Code § 552.022(a)(1), (17). We first note some of the submitted information is part of a completed investigation subject to subsection 552.022(a)(1). The sheriff's office must release this information pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). We also note the information contains a court-filed document that is subject to subsection 552.022(a)(17). This information is expressly public under subsection 552.022(a)(17), and the sheriff's office must release it unless it is confidential under the Act or other law. Although you raise sections 552.108 and 552.111 of the Government Code for the information subject to section 552.022(a)(1) and 552.022(a)(17), these are discretionary exceptions to disclosure that protect the governmental body's interests and do not make information confidential under the Act. *See id.* § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the sheriff's office may not withhold the information subject to subsection 552.022(a)(17) under section 552.108 or section 552.111 of the Government Code, and may not withhold the information subject to subsection 552.022(a)(1) under section 552.111. However, because information subject to subsection 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your assertion of that exception for the information subject to section 552.022(a)(1). We will also address your arguments against disclosure for the information not subject to section 552.022.

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 claiming section 552.108(a)(1) must reasonably explain how and why the 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). You state, and provide documentation showing, some of the remaining information pertains to pending criminal cases with the Travis County District Attorney's Office. You state release of the information at issue would interfere with the prosecution of crime. Based on your representations, we conclude the release of the remaining information you have indicated under section 552.108(a)(1) 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, section 552.108(a)(1) is applicable to the remaining information you have indicated on that basis.

Section 552.108(a)(2) 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 has concluded in a final result other than a conviction or deferred adjudication. You state the information you have indicated under section 552.108(a)(2) pertains to closed criminal investigations that did not result in conviction or deferred adjudication. Thus, we find section 552.108(a)(2) is applicable to the information you have indicated on that basis.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information and the information we have marked under section 552.022(a)(17), which must be released, the sheriff's office may withhold the information you have indicated under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code.²

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)). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706. 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 pet.). This office has concluded section 552.108(b)(1) 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)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

(disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

You state the release of the information you have indicated under section 552.108(b)(1) would jeopardize the security of sensitive law enforcement records. Based on your representations and our review, we agree the release of this information, which we have marked under section 552.108(b)(1), would interfere with law enforcement and may be withheld.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, orig. proceeding); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, orig. proceeding). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995). However, a governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

Further, section 552.111 does not generally except from disclosure facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; ORD 615 at 5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information may also be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

You state some of the remaining information consists of communications between investigators and crime or intelligence analysts for the sheriff's office that contain advice, opinions, and recommendations related to investigations conducted by the sheriff's office. However, upon review, we find the information at issue is general administrative and purely factual information or does not pertain to policymaking. Thus, we find you have failed to demonstrate how any of the remaining information consists of advice, opinions, or recommendations on policymaking matters. Accordingly, the remaining information may not be withheld under section 552.111 of the Government Code.

Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). We note section 552.117(a)(2) is also applicable to personal cellular telephone and pager numbers, provided the cellular telephone or pager service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). You indicate the individuals whose information is at issue are licensed peace officers as defined by article 2.12. Accordingly, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the cellular telephone and pager numbers we have marked may not be withheld if a governmental body pays for the cellular telephone or pager service.

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. Gov't Code § 552.117(a)(1). Upon review, we find no portion of the remaining information you have marked consists of the home address or telephone number, emergency contact information, social security number, or family member information of a current or former official or employee of the sheriff's office. Accordingly, the sheriff's office may not withhold any portion of the submitted information under section 552.117(a)(1).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country.³ Gov't Code § 552.130(a). Accordingly, the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.136(b) of the Government Code provides, “[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); *see id.* § 552.136(a) (defining “access device”). Accordingly, the sheriff’s office must withhold the information we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)–(c). The sheriff’s office must withhold the e-mail addresses, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release.

In summary, with the exception of basic information and the information we have marked under section 552.022(a)(17), which must be released, the sheriff’s office may withhold the information you have indicated under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. The sheriff’s office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The sheriff’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the cellular telephone and pager numbers we have marked may not be withheld if a governmental body pays for the cellular telephone or pager service. The sheriff’s office must withhold the information we have marked under section 552.130 of the Government Code. The sheriff’s office must withhold the information we have marked under section 552.136 of the Government Code. The sheriff’s office must withhold the e-mail addresses, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release. The remaining information must be released.⁴

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/>

⁴We note you did not raise any exceptions to disclosure for an e-mail you titled “Fwd 2011-072635 doc.” Consequently, we have no basis to conclude the sheriff’s office has any interest in this information and it must be released with the remaining information.

[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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 546678

Enc. Submitted documents

c: Requestor
(w/o enclosures)