



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2015

Ms. Molly Cost
Assistant General Counsel
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-09167

Dear Ms. Cost:

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# 563280 (DPS PIR No. 15-0866).

The Texas Department of Public Safety (the "department") received a request for records and data, including audio and visual recordings, of a specified helicopter during a specified period of time. You state you are releasing some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted 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 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 the submitted video recordings relate to ongoing criminal investigations. Based on this representation and our review, we find release of the 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). Accordingly, the department may withhold the submitted video recordings under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) of the Government Code provides:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) 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 an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsection 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 (1989) (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.*, ORDs 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).

You assert the release of the submitted flight logs would interfere with law enforcement. You explain release of this information “would provide wrong-doers, drug traffickers, terrorists, and criminals with invaluable information concerning the use of [d]epartment helicopters in law enforcement operations, including border security operations, and the methods used to detect criminal activity and search for criminal actors, allowing those parties to circumvent these prevention efforts.” Further, you assert release of the information that reveals when the aircraft was airborne and the equipment used during specific conditions to spot criminal actors “would allow someone to detect patterns in the use of the aircraft to determine the best times and locations to avoid detection of criminal activities, as well as the


types of equipment used to locate criminal activity and assist law enforcement personnel on the ground, hampering those apprehension efforts.” Upon review, we find the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated how any of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

In summary, the department may withhold the submitted video recordings under section 552.108(a)(1) of the Government Code and the information we have marked under section 552.108(b)(1) of the Government Code. The remaining 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.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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 563280

Enc. Submitted documents

c: Requestor
(w/o enclosures)