



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2015

Ms. Patricia Fleming
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2015-19384

Dear Ms. Fleming:

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# 579731.

The Texas Department of Criminal Justice (the "department") received a request for inbound and outbound call and text records for a named department employee. You claim portions of the submitted information are not subject to the Act. You state you will redact certain information subject to sections 552.117 and 552.1175 of the Government Code.¹ Additionally, you claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered the requestor's comments. *See Gov't Code § 552.304* (interested party may submit written comments regarding availability of requested information).

¹Section 552.024 of the Government Code authorizes a governmental body to redact from public release information subject to section 552.117 of the Government Code without the necessity of requesting a decision from this office under the Act, if the employee timely elected to withhold such information. *See Gov't Code §§ 552.024, .117*. Section 552.1175(f) of the Government Code authorizes a governmental body to redact information subject to section 552.1175(b) of the Government Code without the necessity of requesting a decision from this office under the Act, if the individual properly elects to keep such information confidential. *See id.* § 552.1175(b), (f).

Initially, the department contends some of the submitted information is not subject to the Act. The Act is applicable only to “public information.” *See id.* §§ 552.002, .021. Section 552.002(a) defines “public information” as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Thus, virtually all the information in a governmental body’s physical possession constitutes public information and is subject to the Act. *Id.*; *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

You inform us the telephone numbers you have marked consists of telephone numbers relating to personal calls not connected to the transaction of official business of the department. *See* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Based on your representations and our review of the information at issue, we agree the information you have marked does not constitute “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the county. *See* Gov’t Code § 552.002. Therefore, we conclude the information you have marked is not subject to the Act and need not be released in response to the present request for information.

Next, we must address the requestor’s assertion that the department failed to comply with the procedural requirements of the Act by not stating the reasons why the stated exceptions applied to the requested information. Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the

information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). The department states it received the request for information on June 29, 2015. The department informs this office it was closed on July 3, 2015 in observance of Independence Day. We note this office does not count holidays for purposes of calculating a governmental body's deadlines under the Act. Thus, the department's fifteen-business-day deadline was July 21, 2015. In accordance with section 552.301(e), the department sent to our office, in an envelope postmarked July 21, 2015, the department's written comments stating the reasons why the stated exceptions would apply and the requested information. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or intragency mail). Therefore, we find the department did not fail to comply with the requirements of section 552.301 of the Government Code when it submitted its written comments to this office.

Section 552.108(b)(1) of the Government Code 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[.]" *Id.* § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). This office has concluded that section 552.108(b) 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), 508 (1988) (release of dates of prison transfer could impair security), 413 (1984) (release of sketch showing security measures to be used during execution would unduly interfere with law enforcement). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." ORD 506 at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* You inform us the information you have marked consists of the telephone numbers of department employees and individuals these employees communicate with for law enforcement purposes. You inform us these individuals' positions require rapid responses to emergencies and serious incidents arising in prison units and in the field with

parolees. You assert the release of this information would interfere with law enforcement. Based on your representations and our review, we conclude the department may withhold the telephone numbers you have marked under section 552.108(b)(1) of the Government Code.

In summary, the department need not release the information, which you have marked, that is not subject to the Act. The department may withhold the information you 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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', with a stylized flourish at the end.

Thana Hussaini
Assistant Attorney General
Open Records Division

TSH/cbz

Ref: ID# 579731

Enc. Submitted documents

c: Requestor
(w/o enclosures)