



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 26, 2016

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2016-16823

Dear Ms. Grace:

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# 620031 (CoA PIR# 26557).

The Austin Police Department (the "department") received a request for eight categories of information related to specified software. You state the department will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of Dataminr and PATHAR, Inc. ("PATHAR"). Accordingly, you state you notified Dataminr and PATHAR of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from PATHAR. We have considered the submitted arguments and reviewed the submitted information. We have also received comments from the requestor and the United States Customs and Border Protection ("CBP"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You argue some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2016-08913B, 2015-26269 (2015), and 2015-19006 (2015). In Open Records Letter No. 2016-08913B we ruled, (1) the department must continue to rely on Open Records Letter Nos. 2015-19006

and 2015-26269 as previous determinations and withhold or release the identical information in accordance with those rulings, (2) the department may withhold the information we marked under section 552.108(b)(1) of the Government Code, (3) the department may withhold PATHAR's information at issue on behalf of CBP under section 552.108(b)(1) of the Government Code, and (4) the department must release the remaining information. In Open Records Letter No. 2015-26269 we ruled the department must withhold the submitted information under section 552.110(b) of the Government Code. In Open Records Letter No. 2015-19006, we ruled, (1) the department must release any additional responsive information to the extent this information existed and was maintained by the department on the date it received the request; (2) a portion of the information is not public information and the department need not release it in response to the request for information; and (3) the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, the department must continue to rely on Open Records Letter Nos. 2016-08913B, 2015-26269, and 2015-19006 as previous determinations and withhold or release the identical information in accordance with those rulings.¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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 information is or is not excepted from disclosure). However, we will address the submitted arguments for the information not subject to the prior rulings.

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 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, 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)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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

You state the information you have marked “reflects details concerning specific law enforcement investigative tools and techniques the department has and will continue to utilize when conducting criminal investigations.” You further state “release of the information in question would reveal specific details about the technological tools, including strengths and limitations,” which “would interfere with the department’s ability to utilize these investigative tools.” Based on your representations and our review, we agree the release of the remaining information would interfere with law enforcement. Accordingly, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code.²

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, the department must continue to rely on Open Records Letter Nos. 2016-08913B, 2015-26269, and 2015-19006 as previous determinations and withhold or release the identical information in accordance with those rulings. The department may withhold the information we have marked 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, 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 620031

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)