



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2017

Ms. Judi S. Rawls  
Assistant City Attorney/Police Admin Legal Counsel  
Beaumont Police Department  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2017-08130

Dear Ms. Rawls:

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# 658409 (OR 02-76).

The Beaumont Police Department (the "department") received a request for specified information pertaining to department duty weapons. The department claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the submitted information contains information that is subject to section 552.022 of the Government Code. Section 552.022(a)(3) reads as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Although the department asserts the information subject to section 552.022(a)(3), which we have marked, is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022(a)(3) under section 552.108. Accordingly, the department must release the information we have marked under section 552.022(a)(3) of the Government Code.

Section 552.108(b) of the Government Code excepts from disclosure “[a]n 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 . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

The department asserts release of the remaining information would interfere with law enforcement because it would divulge internal records on firearms and types of firearms. The department also argues release of some of the information at issue would compromise officer safety because it would reveal which officers use certain types of firearms. In addition, the department objects to the release of the firearm serial numbers at issue because that information could be used on illegal firearms or falsely used in a missing weapons

report. Upon review, we find the release of the information we have marked under section 552.108(b)(1) and the firearm serial numbers in the remaining documents would interfere with law enforcement. Therefore, the department may withhold the information we have marked and the firearm serial numbers in the remaining documents under section 552.108(b)(1) of the Government Code. However, we conclude the department has not established the release of the remaining information would interfere with law enforcement. Therefore, the department may not withhold any of the remaining information under section 552.108(b)(1).

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.<sup>1</sup> Gov't Code § 552.117(a)(2). Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *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). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. *Id.* We have marked a cellular telephone number of a peace officer that the department must withhold under section 552.117(a)(2) of the Government Code if the cellular telephone service was not provided to the officer at public expense. However, the department may not withhold this information under section 552.117(a)(2) if the cellular telephone service was provided to the officer at issue at public expense.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. The department must withhold the cellular telephone number we have marked under section 552.1175 of the Government Code if the individual at issue is a licensed peace officer, he elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service was not provided to the him at public expense. However, the department may not withhold this information under section 552.1175 if the individual is not a currently licensed peace officer, he does not elect to restrict access to this information in accordance with section 552.1175(b), or the cellular telephone service was provided to him at public expense.

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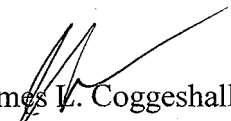
<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

To conclude, the department must release the information we have marked under section 552.022(a)(3) of the Government Code. The department may withhold the information we have marked and the firearm serial numbers in the remaining documents under section 552.108(b)(1) of the Government Code. The department must withhold the cellular telephone number we have marked under section 552.117(a)(2) of the Government Code if the cellular telephone service was not provided to the officer at public expense. The department must also withhold the cellular telephone number we have marked under section 552.1175 of the Government Code if the individual at issue is a licensed peace officer, he elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service was not provided to the him at public expense. The department must release the remaining information.

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](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,

  
James V. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 658409

Enc. Submitted documents

c: Requestor  
(w/o enclosures)