



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2017

Mr. Jonathan Ellzey
Assistant District Attorney
Wichita County
900 Seventh Street
Wichita Falls, Texas 76301-2482

OR2017-09917

Dear Mr. Ellzey:

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# 656599 (ORR.1156).

Wichita County (the "county") received a request for a list containing specified employee information during a specified year. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.152 of the Government Code provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. The county represents the release of the undercover officers identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the submitted information. Accordingly, the county must withhold the identifying information of the undercover officers we marked under section 552.152 of the Government Code.

However, we find the county has failed to demonstrate release of the remaining information it marked would subject an employee or officer to a substantial threat of physical harm. Therefore, we conclude section 552.152 is not applicable to the remaining information at issue and it may not be withheld on that basis.

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[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must 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 do not explain how the remaining information you marked pertains to a particular pending criminal investigation. Thus, we find you have failed to demonstrate how release of the remaining information you marked would interfere with the detection, investigation, or prosecution of crime. Therefore, the county may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) 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 . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded 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 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 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). 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). Upon review, we find the county has failed to demonstrate release of any of the remaining information at issue would interfere with law

enforcement or crime prevention. Accordingly, the county may not withhold any of the remaining information at issue under section 552.108(b)(1) of the Government Code.

In summary, the county must withhold the identifying information of the undercover officers we marked under section 552.152 of the Government Code. As no other exceptions to disclosure have been raised, the county 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, 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,



Emily Buchanan
Assistant Attorney General
Open Records Division

EB/tdw

Ref: ID# 656599

Enc. Submitted documents

c: Requestor
(w/o enclosures)