



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2017

Mr. Sharbel Sfeir
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2017-10413

Dear Mr. Sfeir:

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# 657695 (TDCJ# AL0003).

The Texas Department for Criminal Justice (the "department") received a request for specified information relating to the treatment of a specified group of inmates. You state the department will release most 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's claim the department failed to comply with the procedural requirements a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Additionally, pursuant to section 552.301(d) of the Government Code, a governmental body must, within ten business days of receiving the request for information, provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a

copy of the governmental body's written communication to the attorney general. *Id.* § 552.301(d). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (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. *See id.* § 552.301(e). In this instance, you state the department received the request for information on February 23, 2017. You inform us the department operated on a skeleton crew on March 2, 2017. This office does not count holidays, including skeleton crew days observed by a governmental body, as business days for the purposes of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten- and fifteen-business-day deadlines were March 10, 2017, and March 17, 2017, respectively. The information required by section 552.301(b) was received on March 10, 2017, and the envelope containing the information required by section 552.301(e) is meter-marked March 17, 2017. *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 interagency mail). Additionally, we note the correspondence the department submitted to this office requesting a ruling reflects the requestor was copied on the correspondence. Consequently, we find the department complied with the requirements of section 552.301 in requesting this decision from our office.

Next, the requestor claims the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;

(9) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

(11) each amendment, revision, or repeal of information described by Subdivisions (7)-(10);

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases; [and]

(13) a policy statement or interpretation that has been adopted or issued by an agency[.]

Id. § 552.022(a)(1), (8)-(13). Upon review, we find none of the submitted information is subject to section 552.022. Accordingly, we consider the department's argument against disclosure of the submitted information.

Next, we address the requestor's contention the information must be released under section 552.134(b)(1) of the Government Code. Section 552.134 of the Government Code relates to inmates of the department and provides in relevant part as follows:

(b) Subsection (a) does not apply to:

(1) statistical or other aggregated information relating to inmates confined in one or more facilities operated by or under a contract with the department[.]

Id. § 552.134(b)(1). Accordingly, information delineated in section 552.134(b)(1) may not be withheld under section 552.134(a). We note the department does not seek to withhold information under section 552.134(a). As the department does not seek to withhold the information under section 552.134(a), we need not address the applicability of section 552.134(b)(1) to the submitted information.

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[.]” *Id.* § 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, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) exempts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. See Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b) exempts 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 exempted). 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).

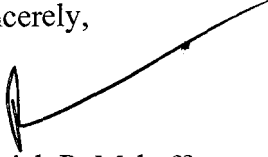
You state the submitted information, if released, would “undermine the security measures” formed to protect a vulnerable category of inmates. You further explain release of this information would provide the public with specific details of the procedures and that individuals “intent on preying on vulnerable prison populations” could use this information along with other publicly available information to identify vulnerable individuals and do them harm. Thus, you assert release of the submitted information would interfere with law enforcement. Based on your arguments and our review of the information at issue, we agree that release of the information we have marked would interfere with law enforcement. Accordingly, the department may withhold the information we have marked under section 552.108(b)(1). However, we find you have failed to demonstrate any of the remaining information you seek to withhold would interfere with law enforcement or crime prevention. Consequently, the department may not withhold the remaining information at issue under section 552.108(b)(1). 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 'Patrick P. Mehaffy', written over a thin horizontal line.

Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/eb

Ref: ID# 657695

Enc. Submitted documents

c: Requestor
(w/o enclosures)