



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2017

Ms. Annette C. Hinojosa
County and District Attorney
Willacy County
576 West Main Street
Raymondville, Texas 78580

OR2017-11929

Dear Ms. Hinojosa:

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# 664205.

Willacy County (the "county") received a request for information pertaining to (1) the amount of money allocated by the United States Department of Homeland Security and the Federal Emergency Management Agency to the Willacy County Sheriff's Office (the "sheriff's office") for Operation Stonegarden activities since January of 2015; and (2) Operation Stonegarden reports submitted by deputies of the sheriff's office since that same date. The county states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have also received correspondence from the United States Customs and Border Protection ("CBP") objecting to the release of the information at issue under sections 552.101 and 552.108. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, the county acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.302 of

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because the county informs us, and provide documentation showing, CBP objects to the release of the information at issue, we will consider whether the county may withhold the submitted information under section 552.108 of the Government Code on behalf of CBP. Because section 552.101 can also provide a compelling reason to overcome the presumption of openness, we will address the arguments under that section as well. However, we find the county has failed to establish a compelling reason to address its remaining arguments.

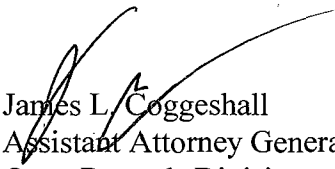
Section 552.108(b) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if (1) release of the internal record or notation would interfere 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).

CBP asserts release of the submitted time sheets would interfere with law enforcement because it could, among other things, reveal the limits in CBP's law enforcement coverage and inform smugglers and organized criminals of possible seams or gaps in its enforcement effort; allow officers and agents to be tracked or followed; permit smugglers to flood a particular area with aliens, which would allow smugglers, terrorists, and other criminals easier access to those areas; and allow traffickers, terrorists, or other criminals to identify vulnerabilities and avoid detection from law enforcement. Upon review, we find CBP has established release of the submitted information would interfere with law enforcement. Therefore, the county may withhold the submitted information on behalf of CBP under section 552.108(b)(1) of the Government Code.²

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 664205

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address the arguments to withhold this information.