



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2017

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2017-18225

Dear Ms. Burnett:

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# 670533 (OGC# 175608).

The University of Texas Medical Branch at Galveston (the "university") received a request for specified information pertaining to the duty weapons of the university police department. You state the university does not possess information responsive to portions of the request.¹ You state the university will redact information pursuant to sections 552.1175(f) and 552.136(c) of the Government Code.² You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Additionally, you state you have notified the Fort Bend County Attorney's Office (the "attorney's office") and

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of certain individuals who properly elect to keep this information confidential. Gov't Code § 552.1175(b), (f). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). *Id.* § 552.1175(g), (h). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

the Texas City Police Department (the “department”) of the request. *See* Gov’t Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have received comments from the attorney’s office.³ We have also received comments from the requestor. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 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:

...

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

Id. § 552.022(a)(3). The submitted information includes information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The university must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* Although the university raises section 552.108 of the Government Code for this information, section 552.108 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Therefore, the university may not withhold any of the information subject to section 552.022(a)(3), which we marked, under section 552.108. However, we will address the university’s arguments against disclosure of the remaining information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983). Where an agency has custody of information relating to the concluded case of another law enforcement agency, the custodian

³As of the date of this letter, we have not received any comments from the department.

of records may withhold the information if it provides this office with a demonstration that the information relates to a criminal case that has reached a conclusion other than a conviction or deferred adjudication and a representation from the law enforcement agency that it wishes to have the information withheld. The attorney's office states report number 10-21928 pertains to a criminal investigation that did not result in conviction or deferred adjudication. Additionally, the university asserts the information it marked pertains to a criminal case of the university's police department that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) of the Government Code is applicable to report number 10-21928 and the information you marked.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the university may withhold report number 10-21928 under section 552.108(a)(2) of the Government Code on behalf of the attorney's office.⁴ The university may withhold the information you marked under section 552.108(a)(2) 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, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts 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) 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 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

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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).

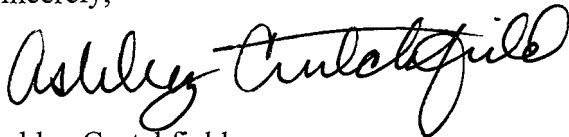
You explain release of the information you marked under section 552.108(b)(1) that is not subject to section 552.022(a)(3) would interfere with law enforcement and compromise the ability of the university's police department to secure its campus, as well as its ability to protect the safety and welfare of those on campus. You state the marked information relates to specific firearms serial numbers and other firearm information that "could be used on illegal firearms used to commit crimes or to be falsely included in a missing weapons report." Upon review, we find you have demonstrated release of the information at issue would interfere with law enforcement. Therefore, the university may withhold the information at issue under section 552.108(b)(1) of the Government Code.

In summary, with the exception of basic information, the university may withhold report number 10-21928 under section 552.108(a)(2) of the Government Code on behalf of the attorney's office. The university may withhold the information it marked under section 552.108(a)(2) of the Government Code. The university may withhold the information it marked that is not subject to section 552.022(a)(3) of the Government Code under 552.108(b)(1) of the Government Code. The university 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 670533

Enc. Submitted documents

c: Requestor
(w/o enclosures)