



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 19, 2017

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2017-21386

Dear Ms. Cost:

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# 676104 (PIR # 17-3349).

The Texas Department of Public Safety (the "department") received a request for internal investigation and statistical reports from the department's Tactical Marine Unit pertaining to four specified topics.<sup>1</sup> You inform us the department will release some information. You state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code, as well as certain dates of birth pursuant to

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<sup>1</sup>You provide documentation showing the department sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You inform us the department sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. See Gov't Code § 552.2615. The estimate of charges required the requestor to provide deposit for payment of anticipated costs under section 552.263 of the Government Code. See *id.* § 552.263(a). You inform us the department received the required deposit on June 30, 2017. See *id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

Open Records Letter No. 2017-27249 (2017).<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, you assert, and we agree, some of the submitted information is not responsive to the instant request for information because it does not pertain to the topics specified by the requestor. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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 of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally

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<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2017-27249 authorizes the department to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

<sup>3</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

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 release of the information you have marked “would provide wrong-doers, drug traffickers, terrorists, and criminals with invaluable information concerning the use of the tactical marine patrol unit vessels in border security operations and the methods used to detect criminal activity with these vessels allowing those parties to circumvent these prevention efforts.” You further state the information at issue reveals “information about when the vessels are on patrol, how many persons are on the vessels, when they are out of service for maintenance and repairs, and their destinations.” You argue release of this information “would allow someone to detect patterns in the use of the vessels and determine the best times and locations to avoid detection of criminal activities.” Based on your representations and our review, we find the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code.

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 the requirements of Section 552.021 [of the Government Code] 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. You state the information you have marked consists of names of officers in the department’s Tactical Marine Unit patrol. You state “[t]hese officers live in the Rio Grande Valley of the Texas border region where transnational criminal organizations flourish and operate.” You explain releasing the information at issue would put those officers at risk because “[t]he department personnel at issue already have unknown suspicious vehicles [following] them frequently in the border region” and “[r]elease of their names . . . make them more accessible to the criminal elements in the area.” Based on your representations and our review, we agree the department must withhold the information you have marked under section 552.152 of the Government Code.<sup>4</sup>

In summary, the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code. The department must withhold the information you have marked under section 552.152 of the Government Code. The department must release the remaining responsive information.

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 676104

Enc. Submitted documents

c: Requestor  
(w/o enclosures)