



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2018

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2018-00877

Dear Ms. Jimenez:

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# 691291.

The Nueces County Sheriff's Office (the "sheriff's office") received a request for twelve categories of information related to traffic stops, the United States Immigration and Customs Enforcement ("ICE"), and immigration enforcement during a specified time period. We understand the sheriff's office will release some of the requested information to the requestor upon payment of charges. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The sheriff's office asserts ICE marked the submitted form "Law Enforcement Sensitive" under the law enforcement provisions found in section 552(b)(7) of the Freedom of Information Act ("FOIA"), section 552 of title 5 of the United States Code. Generally, FOIA applies only to federal agencies and does not apply to records held by state agencies. Open Records Decision No. 561 at 6 (1990); Attorney General Opinion MW-95 (1979) (FOIA exceptions apply to federal agencies, not to state agencies); *see also Davidson v. Georgia*, 622 F.2d 895, 897 (5th Cir. 1980) (state governments are not subject to FOIA). Information in the possession of a governmental body of the State of Texas is not

confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See* Open Records Decision No.124 (1976) (fact that information held by federal agency is excepted by FOIA does not necessarily mean that same information is excepted under Act when held by Texas governmental body).

However, this office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561, 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded “when information in the possession of a federal agency is ‘deemed confidential’ by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, section [552.101] requires a local government to respect the confidentiality imposed on the information by federal law.” ORD 561 at 7.

Upon review, we find the information at issue is contained in records of the sheriff’s office, which is subject to the state laws of Texas, and the information was submitted to ICE. The information at issue does not consist of confidential information ICE transferred to the sheriff’s office. Accordingly, the sheriff’s office may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with FOIA.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. 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.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (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 known policies and procedures. *See, e.g.*, Open Records Decision Nos. 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 sheriff's office states the submitted information, if released, would interfere with law enforcement or prosecution of crime. The sheriff's office states the information relates to immigration enforcement measures and operations of the Nueces County Jail. The sheriff's office argues release of the information would disclose techniques and procedures and guidelines relating to immigration enforcement by the Nueces County Jail. Based on these representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, the sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find the sheriff's office has not demonstrated release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the sheriff's office may not withhold any of the remaining information at issue under section 552.108(b)(1) of the Government Code.

Some of the remaining information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, to the extent a governmental body does not pay for the cellular telephone service, the sheriff's office must withhold the cellular telephone numbers we marked under section 552.117(a)(2) of the Government Code.

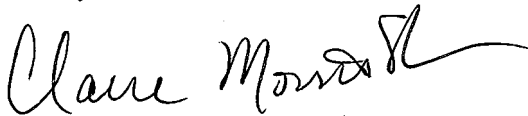
In summary, the sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code. To the extent a governmental body does not pay for the cellular telephone service, the sheriff's office must withhold the cellular telephone numbers we marked under section 552.117(a)(2) of the Government Code. The sheriff's office must release the remaining information.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 691291

Enc. Submitted documents

c: Requestor
(w/o enclosures)