



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2019

Mr. James Kopp
Assistant City Attorney
City of San Antonio
315 South Santa Rosa Avenue, 6th Floor
San Antonio, Texas 78207

OR2019-00801

Dear Mr. Kopp:

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# 753045 (COSA File No. W242478-120518).

The City of San Antonio (the "city") received a request for a specified arrest report involving a named individual. 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 information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an open criminal investigation, and release of the information at issue would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identities of arresting and investigating officers. Accordingly, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

You assert some of the basic information is subject to section 552.152 of the Government Code. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] 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 marked pertains to undercover officers. You represent the release of the officers’ identities would subject the officers to a substantial threat of physical harm. Upon review, we find section 552.152 is applicable to some of the information at issue. Accordingly, with the exception of information we have marked for release, the city must withhold the information you marked under section 552.152 of the Government Code. However, we find you have failed to demonstrate the release of the remaining information at issue would subject an employee or officer to a substantial risk of physical harm. Accordingly, the city may not withhold any of the remaining information you marked under section 552.152 of the Government Code.

You also assert some of the basic information is subject to section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) 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); see *City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. See, e.g., Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable 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 (1980) (governmental body

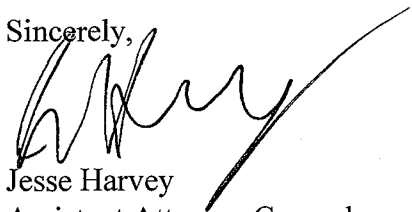
failed to indicate why investigative procedures and techniques requested were any different from those commonly known). Upon review, we find you have failed to demonstrate the release of the information at issue would interfere with law enforcement or prosecution efforts. Accordingly, the city may not withhold any of the remaining basic information under section 552.108(b)(1) of the Government Code.

In summary, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic information, with the exception of information we have marked for release, the city must withhold the information you marked under section 552.152 of the Government Code.

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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/gw

Ref: ID# 753045

Enc. Submitted documents

c: Requestor
(w/o enclosures)