



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2019

Ms. Brittney Baldovinos
Counsel for City of Refugio Police Department
McKibben, Martinez, Jarvis & Wood, L.L.P.
1100 Tower II
555 North Carancahua
Corpus Christi, Texas 78401-0841

OR2019-06128

Dear Ms. Baldovinos:

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# 753506.

The Refugio Police Department (the "department"), which you represent, received a request for offense reports and any other reports relating to individuals held for immigration enforcement during a specified time period, as well as specified department policies and procedures. You state the department does not possess information responsive to a portion of the request.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² You also state you notified United States Customs and Border Protection ("CBP") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. We have received comments from CBP. We have also

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).

²Although you do not cite to section 552.130 of the Government Code in your brief, we understand you to raise this exception based on the substance of your arguments. Although you raise section 552.305 of the Government Code, we note section 552.305 is not an exception to disclosure under the Act. Rather, section 552.305 provides the procedural requirements for notifying third parties that their interests may be affected by a request for information. *See Gov't Code* § 552.305.

received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information, a portion of which constitutes a representative sample.³

Initially we note, and you acknowledge in a letter dated January 10, 2019, the requestor withdrew the portion of her request relating to federal immigration detention reports held by the department. Therefore, the submitted federal immigration detention reports are not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the department is not required to release such information in response to the request.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses section 236.6 of title 8 of the Code of Federal Regulations,⁴ which protects information regarding detainees held on behalf of on the United States Department of Homeland Security (“DHS”).⁵ This section provides as follows:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

³We 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.

⁴Section 552.101 encompasses information that other statutes make confidential. A federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

⁵We note the functions of the Immigration and Naturalization Service (“INS”) were transferred to DHS on March 1, 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

8 C.F.R. § 236.6; *see also id.* § 1.2 (defining Service as “U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and/or U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears”). We note some of the remaining information pertains to detainees for purposes of section 236.6. We understand the department is required to abide by rules promulgated by DHS with regard to detainees. *See id.* § 2.1 (Secretary of Homeland Security may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also ACLU of N.J., Inc. v. County of Hudson*, 799 A.2d 629 (N.J. 2002) (while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government’s exclusive and expressed interest in regulating aliens). You do not provide our office with any applicable law, regulation, or executive order that provides the requestor with a right of access to the information at issue. We therefore conclude the information at issue is made confidential by section 236.6 of title 8 of the Code of Federal Regulations. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code (providing the Secretary of Homeland Security shall establish regulations necessary to carry out laws relating to immigration and naturalization) and section 236.6 of title 8 of the Code of Federal Regulations.⁶ *See ACLU*, 799 A.2d at 655 (concluding because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law requiring disclosure of requested information); *see also English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting federal agency acting within scope of its congressionally delegated authority may preempt state regulation).

Section 552.108(b)(1) of the Government Code exempts 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) exempts 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

⁶As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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.*, 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).

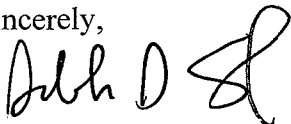
The department states the remaining information, if released, would interfere with law enforcement or prosecution of crime. The department argues release of the information at issue would put police officers' safety in danger because it would make information public regarding special procedures officers undertake in conducting traffic stops. 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 department may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find the department has not demonstrated release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining information at issue under section 552.108(b)(1) of the Government Code.

In summary, the department may withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code and section 236.6 of title 8 of the Code of Federal Regulations. The department may withhold the information we marked under section 552.108(b)(1) of the Government Code. The department must release the remaining responsive 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,



Deborah Southerland
Attorney
Open Records Division

DS/eb

Ref: ID# 753506

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)