



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2019

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

OR2019-06811

Dear Ms. Calcote:

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# 754308 (PIR# 18-8835)

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified investigation and specified e-mails involving the requestor during a specified period of time. You state you have released some of the information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 (Tex. 1977). 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 at 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).

You state submitted information reveals the particulars of ongoing operations by the department to detect, prevent, and respond to criminal activities. You state release of the information at issue would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning law enforcement efforts, allowing these groups to identify vulnerabilities and avoid detection. You further explain the information at issue is used by the department for planning and deployment of resources and release of the information would reveal confidential staffing requirements and tactical plans of the department. Based on your representations and our review, we agree release of the information we 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 you have not demonstrated release of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold the remaining information under section 552.108(b)(1) of the Government Code.

We note some of the remaining information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(2) of the Government Code 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 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)*. Upon review, we find the department must withhold the information we marked under section 552.117(a)(2) of the Government Code;

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 No. 481 (1987), 480 (1987), 470 (1987)*.

however, the department may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body.

In summary, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. The department must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. The remaining information must be released.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PS/eb

Ref: ID# 754308

Enc. Submitted documents

c: Requestor
(w/o enclosures)

