



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 21, 2019

Ms. Cheri G. Finegan  
Public Information Coordinator  
Texas Facilities Commission  
P.O. Box 13047  
Austin, Texas 78711-3047

OR2019-07872

Dear Ms. Finegan:

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# 755871.

The Texas Facilities Commission (the "commission") received a request for the building plans and electrical, plumbing, heating system, and cooling system schematics of a particular Department of Public Safety ("DPS") DNA Crime Lab. Although the commission takes no position as to the disclosure of the submitted information, you state that release of this information may implicate the privacy interests of DPS. Accordingly, you state you have notified DPS of the request and the opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from DPS and the requestor. *See id.* We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor seeks only information pertaining to a specified DNA Crime Lab on a specified floor. Thus, the portions of the submitted documents that do not consist of information pertaining to this specified DNA Crime Lab are not responsive to the present request. This ruling does not address the public availability of any information that is not

responsive to the request, and the commission is not required to release that information in response to the request.<sup>1</sup>

Next, the requestor contends DPS has publicly disclosed some of the information responsive to the instant request. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. The requestor does not argue DPS has previously released the exact same information the commission now seeks to withhold on behalf of DPS. Accordingly, we will consider the submitted arguments against disclosure of the responsive information.

DPS claims the responsive information is excepted under 552.108 of the Government Code. 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 (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov't Code § 552.108(b)(1). This section 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.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department's use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere

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<sup>1</sup>As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). We note when a governmental body has custody of information, the custodian of the records may withhold the information if this office receives a demonstration that release of the information interferes with law enforcement and a representation from a law enforcement entity that it wishes to have the information withheld. *See* Open Records Decision Nos. 474 (1987), 372 (1983).

DPS argues release of the responsive information would “[reveal] the design plan, diagrams, drawings and as-builts of the structural components of the [DNA crime lab.]” DPS further argues release of the information at issue would “provide wrong-doers, drug traffickers, terrorists, and criminals with invaluable information concerning [the DNA crime lab],” which would leave the crime lab “vulnerable to forced entry and the evidence stored at the [c]rime [l]ab to unauthorized removal or destruction.” Based on DPS’s representations and our review, we agree the release of the responsive information would interfere with law enforcement. Accordingly, the commission may withhold the responsive information under section 552.108(b)(1) of the Government Code on behalf of DPS.<sup>2</sup>

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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/mo

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<sup>2</sup>As our ruling is dispositive, we need not address DPS’s remaining argument against disclosure of this information.

Ref: ID# 755871

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)