



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2019

Mr. Robert J. Davis
Counsel for Collin County
Matthews, Shiels, Knott, Eden, Davis & Beanland, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75221

OR2019-27472

Dear Mr. Davis:

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# 788522 (Ref. No. 1600/69881).

The Collin County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information pertaining to the sheriff's office's use of mobile device forensic tools ("MDFTs"), including all purchase records and agreements, records of use, and policies and procedures. You state the sheriff's office does not have information responsive to the portion of the request seeking aggregate use data for MDFTs.¹ 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.

Initially, we note you have not submitted information responsive to the portion of the request seeking information pertaining to purchase records and agreements concerning MDFTs. Additionally, you do not inform us the sheriff's office has released this information. Although the sheriff's office states it has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information the sheriff's office has

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

submitted for our review. This ruling does not authorize the sheriff's office to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to this portion of the request existed on the date the sheriff's office received the request, we assume the sheriff's office has released it to the requestor. If the sheriff's office has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code §§ 552.108(a)(1), (b)(1). Section 552.108(a)(1) excepts from disclosure information if its release would interfere with a particular pending criminal investigation or prosecution. 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[.]" *Id.* § 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.). A governmental body claiming subsections 552.108(a)(1) and (b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code § 552.301 (e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 Record Decision No. 252 (1980) (section 552.108 designed to protect investigative techniques and

procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment). However, section 552.108(b)(1) is not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (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 assert the submitted information is excepted from disclosure under section 552.108(b)(1) of the Government Code. You assert release of the submitted information “would potentially allow criminal suspects to have knowledge of the law enforcement tools which are available to the [s]heriff’s [o]ffice, and[,] if so inclined, develop ways to attempt to thwart the use and/or effectiveness of the MDFT software, hardware, process[,] or service.” Based upon your representations and our review, we conclude the release of some of the submitted information, which we 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.² However, we find you have failed to demonstrate release of any of the remaining information would interfere with law enforcement or crime prevention. Therefore, the sheriff’s office may not withhold any portion of the remaining information under section 552.108(b)(1) of the Government Code.

You assert the remaining information is excepted from disclosure under section 552.108(a)(1) of the Government Code. However, you do not inform us release of the information at issue would interfere with a particular pending criminal investigation or prosecution. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the information at issue. Therefore, the sheriff’s office may not withhold any of the remaining information at issue under section 552.108(a)(1) 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. The sheriff’s office must release the remaining 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Blake Brennan', written in a cursive style.

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 788522

Enc. Submitted documents

c: Requestor
(w/o enclosures)