



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 11, 2019

Mr. William Overton  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2019-28692

Dear Mr. Overton:

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# 790886 (OGC# PP0145).

The Texas Department of Criminal Justice (the "department") received a request for certain documents and four categories of statistical data pertaining to certain violations involving department employees during certain time periods. You state the department will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.108(b)(1) 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). 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 Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a

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<sup>1</sup>We 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.

governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). 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 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 the information at issue, if released, would interfere with law enforcement or prosecution of crime. You state the release of the information at issue would allow releasees to avoid contact with parole officers and manipulate the level of security and conditions of release in the releasees' favor. Based on your representations and our review, we agree the release of some of the information at issue, which 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 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 under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 508.313(a) of the Government Code, which provides in part:

(a) All information obtained and maintained [by the department], including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

- (1) an inmate of the institutional division [of the department] subject to release on parole, release to mandatory supervision, or executive clemency;
- (2) a releasee; or
- (3) a person directly identified in any proposed plan of release for an inmate.

*Id.* § 508.313(a); *see id.* § 508.001(9) (“releasee” means a person released on parole or to mandatory supervision). You state the information you marked relates to releasees that are subject to section 508.313 of the Government Code. We understand the requestor is not authorized to obtain this information under section 508.313(c). *See id.* § 508.313(c). Further, there is no indication this information is made public under chapter 62 of the Code of Criminal Procedure or section 552.029 of the Government Code; *See id.* § 508.313(e), (f). Based on your representations and our review, we find the information we marked is subject to section 508.313 of the Government Code. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.<sup>2</sup> However, we find you have failed to demonstrate any of the remaining information at issue is confidential under section 508.313. Consequently, the department may not withhold the remaining information under section 552.101 of the Government Code on that basis.

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). You explain the employee identification numbers you marked are used to access sensitive and confidential information within department databases. Thus, the department must withhold the employee identification numbers you marked under section 552.136 of the Government Code.

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 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. The department must withhold the employee identification numbers you marked under section 552.136 of the Government Code. The department must release the remaining information.<sup>3</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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open

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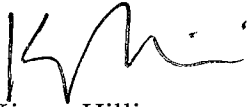
<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>3</sup>We note the requestor has a right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a) (“person or a person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.

Mr. William Overton - Page 4

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable 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 'KH' followed by a stylized name.

Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/rm

Ref: ID# 790886

Enc. Submitted documents

c: Requestor  
(w/o enclosures)