



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Mr. Thomas L. McMillian  
Assistant City Attorney  
City of Amarillo  
200 Southeast 3<sup>rd</sup> Avenue, 4<sup>th</sup> Floor  
Amarillo, Texas 79101-1514

OR2019-36245

Dear Mr. McMillian:

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# 802675 (Ref. No. 19-2060).

The City of Amarillo (the "city") received a request for certain e-mails between specified employees of the city's police department (the "department") containing specified terms during a stated period of time.<sup>1</sup> You state the city has released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Additionally, you state some of the submitted information may implicate the proprietary interests of TransUnion Risk and Alternative Data Solutions, Inc. ("TransUnion"). Accordingly, you state, and provide documentation demonstrating, the city notified TransUnion 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. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990)

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<sup>1</sup> You state the city sought and received clarification of the requested information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed). You also state the city sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the requestor modified his request in response to the cost estimate. *See id.* § 552.222(b); *see also* *City of Dallas*, 304 S.W.3d at 387.

(statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from TransUnion. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note TransUnion objects to disclosure of information the city has not submitted to this office for review. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the city, this ruling does not address this information and is limited to the information submitted as responsive by the city.

Next, TransUnion asserts some of its information is confidential pursuant to an agreement with the city. We note information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

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 . . . 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.). Rather than merely making a conclusory assertion that releasing the information would interfere with law enforcement, the governmental body claiming section 552.108(b)(1) must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). 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 state some of the submitted information consists of memoranda and e-mails that are used by the department to detect, investigate, and prosecute criminal acts. You assert release of the information at issue “would educate suspects on the extent[] of the department’s knowledge of these activities as well as department techniques and allow the persons suspected of committing these crimes to evade detection.” You further assert release of this information would jeopardize the safety of police officers. Based on your representations and our review, we find you have demonstrated release of some of the information at issue would interfere with law enforcement. Accordingly, the city may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Thus, the city may not withhold any portion of the remaining information at issue under section 552.108(b)(1).

TransUnion claims some of the remaining information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also Open Records Decision No. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm). TransUnion asserts release of its “intensively designed/calculated pricing [information]” would allow its competitors to utilize this information in order to substantially harm TransUnion’s competitive position in the marketplace. Upon review, we find TransUnion has demonstrated its pricing information at issue constitutes commercial or financial information, the release of which would cause substantial competitive injury to TransUnion. Accordingly, the city must withhold TransUnion’s pricing information, which we marked, under section 552.110(b) of the Government Code.<sup>2</sup>

In summary, the city: (1) may withhold the information we marked under section 552.108(b)(1) of the Government Code; (2) must withhold TransUnion’s pricing information we marked under section 552.110(b) of the Government Code; and (3) must release the remaining information.

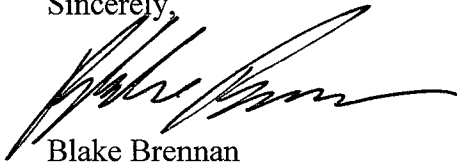
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<sup>2</sup> As our ruling is dispositive, we need not address TransUnion’s remaining argument against disclosure of this information.

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 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,



Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/rm

Ref: ID# 802675

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)