



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 31, 2020

Mr. Matthew R. Entsminger  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2020-03103

Dear Mr. Entsminger:

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# 809333.

The Travis County District Attorney's Office (the "district attorney's office") received a request for records pertaining to the district attorney's office's use of a specified technology. You state you will release some of the requested information. You claim some of 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 representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

---

<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 that those records contain substantially different types of information than that submitted to this office.

*Id.* § 552.022(a)(3). The submitted information includes information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The district attorney's office must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* Although you raise section 552.108 of the Government Code for this information, section 552.108 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the district attorney's office may not withhold any of the information subject to section 552.022(a)(3), which we marked, under section 552.108. However, we will address your argument against disclosure of the remaining 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. 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 the remaining information, if released, would interfere with law enforcement or prosecution of crime. You state the release of the information at issue "could enable offenders on complex cases . . . to avoid detection by exploiting any known weaknesses in these products." 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 city 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 any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the district attorney's office may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.<sup>3</sup> *Id.* § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the district attorney's office must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code. Conversely, if the employee at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the district attorney's office may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Thus, the district attorney's office must withhold the routing and bank account numbers we marked in the remaining information under section 552.136 of the Government Code.

In summary, the district attorney's office may withhold the information we marked under section 552.108(b)(1) of the Government Code. If the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the district attorney's office must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code. The district attorney's office must withhold the routing and bank account numbers in the remaining information we marked under section 552.136 of the Government Code. The district attorney's office must release the remaining information.

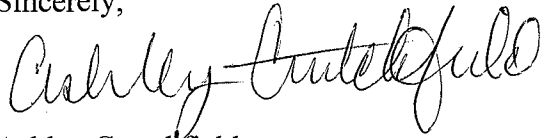
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

---

<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink that reads "Ashley Crutchfield". The signature is written in a cursive style with a large initial "A".

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/gw

Ref: ID# 809333

Enc. Submitted documents

c: Requestor  
(w/o enclosures)