



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 20, 2020

Mr. Cary D. Kirby
County Attorney
Angelina County Attorney's Office
P.O. Box 1845
Lufkin, Texas 75902-1845

OR2020-05387

Dear Mr. Kirby:

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# 812773.

The Angelina County Sheriff's Office (the "sheriff's office") received a request for information related to specified vehicles. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 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.*, ORDs 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 release of the submitted information would “provide a distinct advantage to private citizens planning to commit a crime and to criminals and criminal suspects attempting to avoid detention or arrest[.]” You further state the information you have marked relates to undercover officers and unmarked sheriff’s office vehicles. You state release of this information would reveal unmarked vehicles and vehicles used in undercover operations and the identities of the officers assigned to those vehicles. Based on your representations and our review, we agree the release of some of the submitted information would interfere with law enforcement. Accordingly, the sheriff’s office may withhold the information you have marked under section 552.108(b)(1) of the Government Code.¹ However, we find you have not demonstrated any of the remaining submitted information would interfere with law enforcement or crime prevention. Therefore, the sheriff’s office 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. This section encompasses information made confidential by judicial decision and the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119. You argue release of the remaining information would create a substantial risk of physical harm to peace officers employed by the sheriff’s office. Upon review, we find you have not demonstrated release of any of the information at issue would subject anyone to a specific risk of harm. Accordingly, the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

You seek to withhold the remaining information under section 552.152 of the Government Code. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

requirements of Section 552.021 [of the Government Code] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. Upon review, we find you have not demonstrated the release of any of the remaining information would subject an employee of the sheriff's office to a substantial threat of physical harm. Thus, the sheriff's office may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the sheriff's office may withhold the information you have marked under section 552.108(b)(1) of the Government Code and 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 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 812773

Enc. Submitted documents

c: Requestor
(w/o enclosures)