



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 30, 2020

Mr. David Fulton  
Assistant Criminal District Attorney  
Randall County  
2309 Russell Long Boulevard, Suite 120  
Canyon, Texas 79015

OR2020-09664

Dear Mr. Fulton:

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# 819970.

Randall County (the "county") received a request for records related to all county employees during a specified time period. The county claims the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions the county claims and reviewed the submitted information.

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:

(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:

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body [.]

Gov't Code § 552.022(a)(2). Some of the submitted information consists of the name, salary, title, and dates of employment of employees and officers of the county and is subject

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<sup>1</sup> Although the county does not cite to section 552.152 of the Government Code in its brief, we understand the county to raise this exception based on the substance of its argument.

to section 552.022(a)(2). The county must release this information pursuant to section 552.022(a)(2) unless it is made confidential under the Act or other law. *See id.* The county seeks to withhold the information at issue under section 552.108 of the Government Code. However, 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 county may not withhold the information subject to section 552.022 under section 552.108 of the Government Code. However, as section 552.152 of the Government Code makes information confidential under the Act, we will consider the applicability of section 552.152 to the submitted information. We will also consider the county's argument under section 552.108 of the Government Code against release of the information not subject to section 552.022.

The county seeks to withhold the identifying information of undercover officers 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 [required public disclosure] 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. The county represents the release of the undercover officers' identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the county must withhold the names of the undercover officers within the submitted information under section 552.152 of the Government Code. However, the county has not demonstrated the release of any of the remaining information would subject an employee of the county to a substantial threat of physical harm. Thus, the county may not withhold any of the remaining information under section 552.152 of the Government Code.

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. *Id.* § 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, 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). Although the county argues the information not subject to section 552.022 of the Government Code, if released, would interfere with law enforcement or prosecution of crime, we find the county has not demonstrated release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the county may not withhold any of the information at issue under section 552.108(b)(1) of the Government Code.

In summary, the county must withhold the names of the undercover officers within the submitted information under section 552.152 of the Government Code. The county 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,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/mo

Ref: ID# 819970

Enc. Submitted documents

c: Requestor  
(w/o enclosures)