



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2020

Mr. Bill Ballard
General Counsel
Kendall County
201 East San Antonio Street, Suite 126
Boeme, Texas 78006-2050

OR2020-14008A

Dear Mr. Ballard:

This office issued Open Records Letter No. 2020-14008 to the Kendall County Sheriff's office (the "sheriff's office") on May 19, 2020. Since that time, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the letter issued on May 19, 2020. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). Your request was assigned ID# 838085.

The sheriff's office received two requests from the same requestor for audio and video recordings in a specified case and the policy and procedures manual. You claim 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 information.

Initially, we note the requestor only seeks recordings related to a specified case and the policy and procedures manual. Accordingly, only the submitted dashboard camera recordings related to the specified case and the policy and procedures manual are responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff's office is not required to release such information in response to this request.

Next, we note the requestor has asked the sheriff's office to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith

effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the sheriff's office has made a good faith effort to do so.

Section 552.108 of the Government Code provides, in part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An 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 is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), (b)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). However, section 552.108 is generally not applicable to records of an investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). You state the responsive information in Exhibit E pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to Exhibit E. Thus, the sheriff's office may withhold the responsive information in Exhibit E under section 552.108(a)(2) of the Government Code.¹ Although you also assert sections 552.108(a)(2) and 552.108(b)(2) for Exhibit G,

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

we find Exhibit G is either purely administrative in nature or is information you have not explained pertains to the detection, investigation or prosecution of a criminal case by the city that concluded in a final result other than a conviction or deferred adjudication. Thus, we find you failed to demonstrate the applicability of sections 552.108(a)(2) and 552.108(b)(2) to the remaining information at issue. Therefore, the sheriff's office may not withhold any portion of the information in Exhibit G under subsection 552.108(a)(2) or subsection 552.108(b)(2) 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. 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). 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.*, 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 the information you marked in Exhibit G, if released, would interfere with law enforcement or prosecution of crime. You state the information at issue contains highly specific guidelines for police officers confronted by violence or threatened violence when affecting an arrest or protecting the public safety. You argue release of the information at issue could give criminals a tactical advantage and jeopardize officers' safety. Based on your representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, the sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated how release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.108(b)(1).

In summary, the sheriff's office may withhold the responsive information in Exhibit E under section 552.108(a)(2) of the Government Code. The sheriff's office may withhold

the information we marked under section 552.108(b)(1) of the Government Code. The sheriff's office must release the remaining responsive 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/eb

Ref: ID# 838085

Enc. Submitted documents

c: Requestor
(w/o enclosures)