



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2020

Mr. Thomas Gilliland
Public Information Officer
Harris County Sheriff's Office
1200 Baker Street, 2nd Floor
Houston, Texas 77002-1206

OR2020-15069

Dear Mr. Gilliland:

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# 830822 (Ref. No. 20SO8002091).

The Harris County Sheriff's Office (the "sheriff's office") received a request for information pertaining to its COVID-19 preparedness and treatment plans, including e-mails pertaining to the plans during a stated period of time. 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the sheriff's office has only submitted a two-page draft of its treatment plan in response to the present request for information. To the extent any additional information responsive to the request existed on the date the sheriff's office received the present request, we assume the sheriff's office has already released it. If the sheriff's office has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the requestor's claim the sheriff's office failed to comply with the procedural obligations under section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). We

note this office does not count the date the request was received or holidays, including skeleton crew days observed by a governmental body, for purposes of calculating a governmental body's deadlines under the Act. Upon review, we find the sheriff's office complied with the requirements of section 552.301 in requesting this decision from our office. *See id.* § 552.233 (temporary suspension of requirements for governmental body impacted by catastrophe). Thus, we will consider the argument of the sheriff's office against disclosure of the submitted information.

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[.]” *Id.* § 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 claim the submitted information is excepted from disclosure under section 552.108(b)(1) of the Government Code. You explain the information at issue consists of a “draft Coronavirus Protocol treatment plan maintained for the internal use of the [sheriff's office]” (internal emphasis omitted). You assert release of the information at issue “would . . . jeopardize the safety of the deputies/detention officers engaged in the Coronavirus Protocol.” Based on your representations and our review, we find you have demonstrated release of the information we have marked would interfere with law enforcement. Accordingly, the sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, upon review, we find you have failed to demonstrate release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.108(b)(1) of the Government Code. The sheriff'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.

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/mo

Ref: ID# 830822

Enc. Submitted documents

c: Requestor
(w/o enclosures)