



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 3, 2020

Ms. Mary E. Miller
Assistant District Attorney
County of Denton
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2020-30134

Dear Ms. Miller:

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# 856421 (ORR# 4331).

The Denton County Sheriff's Office (the "sheriff's office") received a request for communications sent to or from a specified listserv during a specified time period. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 525.137 of the Government Code. You also state release of the submitted information may implicate the interests of an interested individual, the New Zealand Department of Internal Affairs (the "department"), and Cyberlutions. Accordingly, you state you notified the third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). You have provided comments from the interested individual, the department, and Cyberlutions. We have considered the submitted arguments and reviewed the submitted 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. *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).

The sheriff’s office and the department argue portions of the submitted information, if released, would interfere with law enforcement or prosecution of crime. The sheriff’s office and Cyberlutions explain the information at issue pertains to communications between the sheriff’s office and other law enforcement agencies and reveals details regarding specific investigation techniques and sensitive information. The sheriff’s office and Cyberlutions further explain release of the information at issue would undermine law enforcement efforts. Based on these 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 sheriff’s office may withhold the information we marked under section 552.108(b)(1) of the Government Code.¹ However, we find the sheriff’s office and the department have failed to demonstrate 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 at issue under section 552.108(b)(1) of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. The sheriff’s office and the department have failed to demonstrate the remaining information at issue pertains to specific ongoing criminal investigations or prosecutions, nor have they explained how its release would interfere with the detection, investigation, or prosecution of crime. Thus, we conclude the sheriff’s office and the department failed to demonstrate the applicability of section 552.108(a)(1) to the remaining information at issue. Therefore, the sheriff’s office may not withhold any of the remaining information at issue under section 552.108(a)(1) of the Government Code.

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

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the sheriff’s office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.²

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *Id.* § 552.1175. We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988). Thus, the sheriff’s office must withhold the information we marked under section 552.1175 to the extent the information pertains to individuals who are subject to section 552.1175 and elect to restrict access to the marked information in accordance with section 552.1175(b) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. However, upon review, we find the sheriff’s office has failed to demonstrate the remaining information you marked is subject to section 552.1175 of the Government Code. Accordingly, the sheriff’s office may not withhold the remaining information you marked under section 552.1175 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note an individual’s name, address, and telephone number are generally not private information under common-law privacy. See Open Records Decision No. 554 at 3 (1990) (disclosure of person’s name, address, or telephone number not an invasion of privacy).

Upon review, we find the sheriff’s office, Cyberlutions, and the interested individual have failed to demonstrate any portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff’s office may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

² In this instance, as our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

In summary, 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 withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The sheriff's office must withhold the information we marked under section 552.1175 to the extent the information pertains to individuals who are subject to section 552.1175 and elect to restrict access to the marked information in accordance with section 552.1175(b) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. 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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/jm

Ref: ID# 856421

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)