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ATTORNEY GENERAL OF TEXAS

January 4, 2022

Ms. Barbara Boulware-Wells
Counsel for the City of Trinidad
The Knight Law Firm, LLP
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2022-00251

Dear Ms. Boulware-Wells:

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# 924534.

The City of Trinidad (the "city"), which you represent, received a request for four categories of information pertaining to specified traffic citations, certain communications, and the names, cellular telephone numbers, and email addresses of each city council member and city employee. You inform us the city does not have information responsive to a portion of the request.¹ You state the city will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

You provide documentation showing the city sought clarification of the request for information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

² Although you do not cite to section 552.137 of the Government Code in your brief, we understand you to raise this exception based on your markings.

for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We have no indication the city has received a response to the request for clarification. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this instance, you have submitted information you believe is responsive to the request and made arguments against disclosure of this information. Thus, we assume the city has made a good-faith effort to relate the request to information the city holds, and we will address the applicability of your arguments to the information. However, the city has no obligation at this time to release any additional responsive information for which the city has not received clarification. If the requestor responds to the request for clarification, the city must seek a ruling from this office before withholding any additional responsive information from the requestor. *See* Gov't Code § 552.222(b); *City of Dallas*, 304 S.W.3d at 387.

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 (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). In Open Records Decision No. 506, this office determined the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." Open Records Decision No. 506 at 2 (1988). We noted the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You state some of the submitted information, if released, would interfere with law enforcement or prosecution of crime. Based on your representation and our review, we

agree the release of the information at issue would interfere with law enforcement. Accordingly, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code.³

Section 552.117(a)(17) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of an elected public officer, regardless of whether the officer complies with section 552.024 or section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(17). We note, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c) (providing that "family member" has meaning assigned by Fin. Code § 31.006(d)). We also note section 552.117 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6 (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, if the cellular telephone services are not paid for by a governmental body, then the city must withhold the cellular telephone numbers in the remaining information under section 552.117 of the Government Code. However, we find you have failed to demonstrate the applicability of section 552.117 to any of the remaining information, and the city may not withhold it on that basis.

Section 552.137 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). Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We are unable to determine whether the personal e-mail addresses within the remaining information at issue, which are located within the personnel records of the city, belong to city officials or employees. Thus, we rule conditionally. To the extent the e-mail addresses within the remaining information are the personal e-mail addresses of city officials or employees, or to the extent subsection (c) applies, this information is not subject to section 552.137 and may not be withheld on that basis. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of "members of the public" for purposes of Gov't Code § 552.137(a)). However, to the extent the e-mail addresses within the remaining information are not the personal e-mail addresses of city officials or employees and subsection (c) does not apply, this information is subject to section 552.137 of the Government Code and must be withheld on that basis, unless the owners of the e-mail addresses affirmatively consent to their release.

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

In summary, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. If the cellular telephone services are not paid for by a governmental body, then the city must withhold the cellular telephone numbers in the remaining information under section 552.117 of the Government Code. To the extent the e-mail addresses within the remaining information are not the personal e-mail addresses of city officials or employees and subsection (c) does not apply, this information is subject to section 552.137 of the Government Code and must be withheld on that basis, unless the owners of the e-mail addresses affirmatively consent to their release. The city 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/jm

Ref: ID# 924534

Enc. Submitted documents

c: Requestor
(w/o enclosures)