



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 27, 2022

Mr. Brian Sears  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2022-33308

Dear Mr. Sears:

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# 981505 (PIR# 22-2131).

The Texas Department of Public Safety (the "department") received a request for electronic communications between two named department staff during a certain time period. You state the department has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note portions of the submitted information, which we have indicated, were the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2022-24777 (2022) and 2022-27669 (2022). We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Accordingly, the department must continue to rely on Open Records Letter Nos. 2022-24777 and 2022-27669 as previous determinations and withhold the identical information in accordance with those rulings.<sup>3</sup> *See* Open Records Decision No. 673 at 6-7

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<sup>1</sup> Although the department raises section 552.111 of the Government Code in its markings, it makes no arguments to support this exception. Therefore, we assume the department has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>3</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

(2001) (discussing criteria for first type of previous determination). We will address the department's arguments against release of the submitted information that is not encompassed by the previous rulings.

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 (Tex. 1977). You state the information at issue relates to a pending investigation or prosecution. Based on your representation and our review, we find release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold the information it marked under section 552.108(a)(1) of the Government Code. We note 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).* Thus, the department has the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov’t Code § 552.007.

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 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 remaining information, if released, would interfere with law enforcement or prosecution of crime. You state the information at issue reveals “department techniques used to investigate and detect activities of suspected criminal elements; how information is assessed and analyzed; how information is shared among partner law enforcement agencies[;] and the lessons learned from the analysis of prior criminal activities.” Based on your representations and our review, we agree the release of the remaining information would interfere with law enforcement. Accordingly, the department may withhold the remaining information under section 552.108(b)(1) of the Government Code.

In summary, the department must continue to rely on Open Records Letter Nos. 2022-24777 and 2022-27669 as previous determinations and withhold the identical information in accordance with those rulings. The department may withhold the information it marked under section 552.108(a)(1) of the Government Code. The department may withhold the remaining information under section 552.108(b)(1) of the Government Code.

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/jxd

Ref: ID# 981505

Enc. Submitted documents

c: Requestor  
(w/o enclosures)