



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2014

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2014-03720

Dear Ms. Cost:

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# 515658 (ORR# 13-4819).

The Texas Department of Public Safety (the "department") received a request for information pertaining to the purchase and use of any "cell site simulator" during a specified time period. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the Federal Bureau of Investigation (the "FBI"). Accordingly, you state, and provide documentation showing, you notified the FBI of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted argument and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-16607 (2012). In that ruling, we determined the department may withhold the information at issue under section 552.108(b)(1) of the Government Code. You state there has been no change

¹As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department may rely on Open Records Letter No. 2012-16607 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information contains a contract that is subject to subsection 552.022(a)(3), which must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to subsection 552.022(a)(3), which we have marked, under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception 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). Therefore, the marked information may not be withheld under section 552.108 of the Government Code. As you claim no other exception to the disclosure of the marked information, it must be released.

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[.]” Gov't Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (Gov't Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques.

See, e.g., Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable 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 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state release of the remaining information “would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning specialized electronic surveillance equipment utilized by the [d]epartment in the investigation and detection of crime, allowing suspects to avoid detection or apprehension, and risk the safety of the public.” Upon review, we find the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, you have not demonstrated how release of any of the remaining information at issue would interfere with law enforcement. Thus, the department may not withhold any of the remaining information under section 552.108(b)(1).

Some of the remaining information may be subject to section 552.117 of the Government Code.² Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 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) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We have marked information under section 552.117 that may consist of the personal cellular telephone numbers of individuals who are employed by the department. The submitted information reveals one of the individuals whose information is at issue is a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. The department must withhold the marked information pertaining to this individual under section 552.117(a)(2) of the Government Code if a governmental body does not pay for the individual's cellular telephone service. However, it is unclear whether the remaining individuals whose information is at issue are currently licensed peace officers as defined by article 2.12. Accordingly, to the extent the remaining individuals whose information is at issue are

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

currently licensed peace officers as defined by article 2.12, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. However, if the remaining individuals whose information is at issue are not licensed peace officers as defined by article 2.12, then the department may not withhold the remaining marked information under section 552.117(a)(2).

If the remaining information we marked under section 552.117 pertains to individuals who are not licensed peace officers, then the remaining marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, if the remaining individuals at issue are not peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the remaining marked information under section 552.117(a)(1) 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. Conversely, to the extent the remaining individuals at issue are not peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, the department may not withhold the remaining marked information under section 552.117(a)(1).

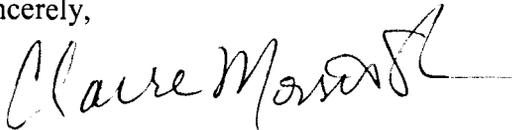
In summary, the department may rely on Open Records Letter No. 2012-16607 as a previous determination and withhold the identical information in accordance with that ruling. The department may withhold the information we marked under section 552.108(b)(1) of the Government Code. If a governmental body does not pay for the individual's cellular telephone service, the department must withhold under section 552.117(a)(2) of the Government Code the information we marked pertaining to the individual who is revealed to be a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. If the remaining individuals whose information we marked are licensed peace officers as defined by article 2.12, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. If the remaining individuals at issue are not peace officers as defined by article 2.12 and if these individuals timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the marked information under section 552.117(a)(1) of the Government Code. However, in either instance, the remaining marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The

department must release the remaining information, including the information we marked subject to section 552.022(a)(3) 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 515658

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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