



January 21, 2015

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

OR2015-01114

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# 550792.

The Texas Department of Public Safety (the "department") received a request for (1) copies of non-disclosure agreements between the department and a named company regarding cellular telephone tracking equipment; (2) copies of non-disclosure agreements signed by department employees regarding cellular telephone tracking equipment manufactured by a named company; (3) and e-mails between the department and the named company during a specified time period pertaining to cellular telephone tracking equipment.¹ You state the department will release some of the requested information upon the requestor's response to a cost estimate. You claim the submitted information is excepted from disclosure under

¹You note the department sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the 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 overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

sections 552.101, 552.108, and 552.152 of the Government Code.² You state release of the submitted information may implicate the interests of the Federal Bureau of Investigation (the "FBI"). Accordingly, you state 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. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from the FBI and the requestor. *See id.* We have considered the submitted arguments and reviewed the submitted information.

Initially, we note a portion of the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2014-22890 (2014). In that ruling, we concluded the department: (1) may continue to rely on Open Records Letter No. 2012-16607 (2012) as a previous determination and withhold the information at issue in accordance with that ruling; (2) may withhold certain information under section 552.108(b)(1) of the Government Code; and (3) must withhold certain information under section 552.152 of the Government Code. We understand the law, facts, and circumstances on which the previous ruling was based have not changed. Therefore, we conclude the department must rely on Open Records Letter No. 2014-22890 as a previous determination and withhold the requested information that is identical to the information that was at issue in Open Records Letter No. 2014-22890 in accordance with that ruling. *See Open Records Decision No. 673 at 6-7 (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). We will consider the submitted arguments for the information not subject to Open Records Letter No. 2014-22890.

The requestor asserts the requested information must be released because the FBI violated section 552.305(e) by failing to provide the requestor with a copy of its comments to this office. Section 552.305(d) states "[i]f release of a person's proprietary information may be subject to exception under Sections 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision." Gov't Code § 552.305(d). Section 552.305(e) requires a person who submits a brief under subsection (d) to send a copy of the brief to the requestor. *See id.* § 552.305(e). We note that section 552.305(e) applies to third parties notified under section 552.305(d), which in this case is not the FBI. Accordingly, we will consider the submitted arguments against disclosure of the remaining information.

²Although you raise section 552.305 of the Government Code, we note this is not an exception to public disclosure under the Act. *See* Gov't Code § 552.305. Rather, section 552.305 addresses the procedural requirements for notifying third parties their interests may be affected by a request for decision. *See id.*

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); *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 remaining information under section 552.108(b)(1) of the Government Code.³

In summary, the department must rely on Open Records Letter No. 2014-22890 as a previous determination and withhold the identical information in accordance with that ruling. 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 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

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

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 550792

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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