



January 23, 2015

Ms. Sarah R. Martin  
Assistant City Attorney  
Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2015-01311

Dear Ms. Martin:

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# 551233 (Arlington Police Department Reference No. 17749).

The Arlington Police Department (the "department") received a request for completed forms pertaining to employees who received red-light tickets that were created during a specified time period. You state the department is releasing some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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: (1) release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1). 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." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed

guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment). To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You state some of the submitted information, which you have marked, provides information related to the date and time of officers' regular work hours and assignments. You state release of this information "will let criminals know how many officers are on duty and what their current assignments are," "expose officers making them more vulnerable," and "aid in allowing criminals to flee detection and plan escape routes." You also state some of the submitted information in Exhibit C reveals the identity of undercover and covert operations officers. Finally, you state some the information in Exhibit C pertains to the steps taken in the execution of narcotics search warrants. You explain the department has used these steps in the execution of warrants in the past and will be using them in the future. You argue release of this information will interfere with law enforcement and crime prevention and compromise the safety of the officers involved in the execution of the narcotics search warrants. Upon review, we find release of the shift and assignment information you have marked in Exhibits B and C, the information we have marked in Exhibit C, and the identities of the undercover and covert operations officers in Exhibit C would interfere with law enforcement. *See* Open Records Decision Nos. 456 at 2 (1987) (statutory predecessor to section 552.108 protected information that, if revealed, might endanger life or physical safety of law enforcement personnel), 211 at 4 (statutory predecessor protected identities of members of Attorney General's Organized Crime Task Force engaged in undercover narcotics work). Therefore, the department may withhold the shift and assignment information you have marked in Exhibits B and C, the information we have marked in Exhibit C, and the identities of the undercover and covert operations officers in Exhibit C under section 552.108(b)(1) of the Government Code.<sup>1</sup> However, we find you have failed to demonstrate how release of the remaining information at issue would interfere with law enforcement, and the department may not withhold any of the remaining information in Exhibit C on this basis.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

You argue the remaining information in Exhibit C is excepted from required disclosure under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119.

You state the remaining information in Exhibit C will pose a substantial risk of harm to the undercover and covert operations officers at issue. However, we find you have failed to demonstrate how release of the remaining information at issue would create a substantial threat of physical harm to the officers. Accordingly, the department may not withhold any of the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department may withhold the shift and assignment information you have marked in Exhibits B and C, the information we have marked in Exhibit C, and the identities of the undercover and covert operations officers in Exhibit C under section 552.108(b)(1) of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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.

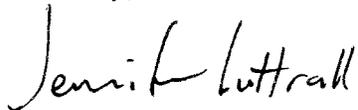
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 551233

Enc. Submitted documents

c: Requestor  
(w/o enclosures)