



February 17, 2015

Ms. Josie L. Ramirez-Solis
Assistant District Attorney
County of Hidalgo
100 North Closner, Room 303
Edinburg, Texas 78539

OR2015-03115

Dear Ms. Ramirez-Solis:

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# 553868 (County File No. 2014-0147).

Hidalgo County (the "county") received two requests from the same requestor for (1) three categories of information pertaining to the county's receipt and use of funds relating to the Border Star grant program during a specified time period, and (2) any and all e-mails sent to or from the Hidalgo County Sheriff's Office's (the "sheriff's office") "command staff," including four named individuals, containing the phrases "Border Star" or "Borderstar" during a specified time period.¹ We understand the county has redacted social security numbers pursuant to section 552.147 of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.108 and 552.116 of the

¹We note the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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 for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.147(b) of the Government Code permits a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

Government Code.³ Additionally, the county has submitted correspondence from the Texas Department of Public Safety (“DPS”), in which DPS asserts that certain information it considers law-enforcement sensitive should be withheld. *See* Gov’t Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted information, a portion of which consists of a representative sample.⁴

Initially, we note you have submitted documents for our review with portions of the information obscured. You have submitted the information at issue in such a manner that it completely covers portions of the information we must review. The failure to provide this office with requested information is a violation of section 552.301 of the Government Code because it generally deprives us of the ability to determine whether information may be withheld. *See* Gov’t Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of “specific information requested” or representative sample), .302. Generally, in such instances, this office has no alternative other than to order the release of the obscured information. However, in this instance, because we can generally discern the nature of the responsive information that has been obscured, being deprived of this information does not inhibit our ability to make a ruling. Therefore, we will address the public availability of this information. In the future, the county should refrain from obscuring responsive information that it submits to this office for the purpose of requesting a ruling under the Act. *See id.* Failure to do so may result in the obscured information being ruled public. *See id.* § 552.302.

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,*

³Although you also raise section 552.101 of the Government Code, you have provided no arguments in support of that exception. Accordingly, we assume you no longer assert section 552.101. *See* Gov’t Code §§ 552.301, .302.

⁴We 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.

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 explain the submitted information concerns a specific federal and state task force initiative called Border Star, the goal of which is to reduce violence and crime along border areas. You state some of the information “details the time logs of the officers, what specific sector they patrolled and for how long, and any suspicious criminal activity observed.” Thus, you contend release of this information would interfere with law enforcement. You explain these e-mails and attached reports contain law enforcement information pertaining to the Border Star task force and describe specific individuals and vehicles suspected of criminal activity along the border. Thus, the county contends release of this information would interfere with law enforcement. Upon review, we find you have demonstrated release of the information we have marked would interfere with law enforcement. Accordingly, the county may withhold the information we have marked and indicated under section 552.108(b)(1) of the Government Code. However, the county has failed to demonstrate how the remaining information would interfere with law enforcement, and the county may not withhold it under section 552.108(b)(1) of the Government Code.

You claim section 552.116 of the Government Code for the information in Exhibit D. Section 552.116 provides the following:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution

or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

- (A) intra-agency and interagency communications; and
- (B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state Exhibit D pertains to an audit of the county by the Chief Auditor's Office of DPS related to the county's participation in the Border Star program. Thus, you assert this information constitutes audit working papers that should be withheld under section 552.116. However, section 552.116 is intended to protect the auditor's interests. The information at issue is maintained by the county, who we understand is the auditee in this instance. As the auditee, the county cannot assert section 552.116 in order to protect its own interest in withholding the information. However, the information at issue reflects DPS considers this information to be audit working papers of the DPS Chief Auditor's Office, and that such information is excepted under section 552.116 of the Government Code. Accordingly, we conclude the county may withhold Exhibit D under section 552.116 of the Government Code.

We note the remaining information includes the cellular telephone number of a county peace officer.⁵ Accordingly Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). We note section 552.117(a)(2) 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 understand the individual whose information is at issue is a licensed peace officer as defined by article 2.12. Accordingly, if a governmental body does not pay for the cellular telephone service, the county must withhold the cellular telephone number we have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the county must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

In summary, the county may withhold the information we have marked and indicated under section 552.108(b)(1) of the Government Code. The county may withhold Exhibit D under section 552.116 of the Government Code. If a governmental body does not pay for the cellular telephone service, the county must withhold the cellular telephone number we have marked under section 552.117(a)(2) of the Government Code. The county must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The county 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 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 553868

Enc. Submitted documents

c: Requestor
(w/o enclosures)