



February 24, 2015

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

OR2015-03603

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# 554860.

The Texas Department of Public Safety (the "department") received a request for e-mails between the department and a named company during a specified time period pertaining to cellular telephone tracking equipment.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.² You state release of the information may implicate the proprietary interests of a third party. You also indicate that release of the submitted information may implicate the interests of the Federal Bureau of Investigation (the "FBI"). Accordingly, you state, and provide documentation showing, you notified the third party and the FBI of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party

¹You state the requestor modified his request in response to a cost estimate. *See* Gov't Code § 552.263(e-1) (modified request is considered received on the date the governmental body receives the written modification).

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.*

to raise and explain applicability of exception in the Act in certain circumstances); *see* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the FBI and the third party. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have marked portions of the submitted information as not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the department need not release non-responsive information to the requestor.

Section 552.108(b)(1) of the Government Code exempts 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 submitted 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 and jeopardize the future use of this specialized equipment.” You further state release of the submitted information compromises investigative efforts of the department and allows criminals to “employ techniques to defeat or detect this equipment, rendering it ineffective.” Upon review, we find the department may withhold the submitted information under section 552.108(b)(1) of the Government Code.³

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.

³As our ruling is dispositive, we need not address the arguments submitted by the FBI and the third party against disclosure of this information.

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 554860

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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