



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 14, 2015

Mr. Christopher Garza
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2015-14327

Dear Mr. Garza:

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# 571218.

The Brazoria County Clerk's Office (the "county") received a request for a list of all current full-time county employees' names and positions, and primary location information, excluding undercover police officers.¹ You claim some of the requested information is not subject to the Act. You claim the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered your claims and reviewed the submitted information.

You assert the information pertaining to employees of the judiciary, which you have submitted as Exhibit D, constitutes judicial records not subject to the Act. The Act is applicable to information "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a

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 governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

governmental body[.]” Gov’t Code § 552.002(a)(1). However, the Act’s definition of “governmental body” “does not include the judiciary.” *Id.* § 552.003(1)(B). Information “collected, assembled, or maintained by or for the judiciary” is not subject to the Act but instead is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035). Rule 12 of the Rules of Judicial Administration governs the public disclosure of judicial records, which are not subject to the Act. TEX. R. JUD. ADMIN. 12.1, 12.3; Gov’t Code §§ 552.003(a)(B), .0035(a). Rule 12.2 of the Rules of Judicial Administration defines a “judicial record” as “a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function[.]” TEX. R. JUD. ADMIN. 12.2(d).

You contend the information in Exhibit D constitutes judicial records maintained by the county on behalf of the judiciary. Based upon your representation, we conclude the information pertaining to employees of the judiciary in Exhibit D is not subject to the Act and need not be released under the Act.

We next note some of the submitted information in Exhibit E is not responsive to the instant request for information because it does not consist of employees’ names and positions, or primary location information. This ruling does not address the public availability of non-responsive information, and the county is not required to release non-responsive information in response to this request.

We note the employees’ names and positions are subject to section 552.022 of the Government Code. Section 552.022(a)(2) provides the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body are expressly public under section 552.022 of the Government Code and may not be withheld unless it is made confidential under the Act or other law. Gov’t Code § 552.022(a)(2). Although you assert the employees’ names and positions are excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary-exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the county may not withhold the employees’ names and positions under section 552.108. As the county raises no other exception to disclosure of this information, the county must release the employees’ names and positions in Exhibit E pursuant to section 552.022(a)(2) of the Government Code.

We next address your claim under section 552.108 of the Government Code for the remaining responsive information in Exhibit E. Section 552.108(b) 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). This section 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 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 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” ORD 506 at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). 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 claim the employees’ primary location information in Exhibit E is subject to section 552.108(b)(1) of the Government Code. You state the information at issue relates to the work locations of county law enforcement employees who protect and provide security for the county and the number of law enforcement employees at each location. You assert release of the information at issue would allow criminals to anticipate weaknesses in the county’s law enforcement infrastructure, “create a substantial threat of physical harm[,] and jeopardize the safety of law enforcement employees and the citizens they protect.” Upon review of the information in Exhibit E and consideration of your arguments, we conclude the county may withhold the primary location of the peace officers who protect and provide

security for the county under section 552.108(b)(1) of the Government Code.² You must release the information pertaining to the locations of other county employees.

In summary, the information pertaining to employees of the judiciary in Exhibit D is not subject to the Act and need not be released under the Act. The county must release the employees' names and positions in Exhibit E pursuant to section 552.022(a)(2) of the Government Code. Based on section 552.108(b)(1) of the Government Code, the county may withhold the information in Exhibit E that discloses the primary location of the peace officers who protect and provide security for the county. The county must release the information pertaining to the locations of other county employees.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 571218

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address your remaining claim.