



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 10, 2015

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

OR2015-18903

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# 578908 (PIR# 15-2966 and 15-3771).

The Texas Department of Public Safety (the "department") received a request for eight categories of information pertaining to Operation Strong Safety.¹ You indicate you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. Additionally, you state release of portions of the submitted information may implicate the interests of certain third-party governmental bodies, namely: the United States Border Patrol and the Texas Parks and Wildlife Department ("TPWD"). Accordingly, you state you have notified these governmental bodies of the request for information and of each party's right to submit arguments to this office as to why the submitted information should not be released. We have considered the exceptions you claim and reviewed the submitted

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).

representative sample of information.² We have also received and considered comments from a representative of the requestor and TPWD. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you state some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-17735 (2015). In that ruling, we determined the department must (1) withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code; (2) withhold the information we marked under section 552.136 of the Government Code; and (3) release the remaining information. We understand there has been no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department must rely on Open Records Letter No. 2015-17735 as a previous determination and withhold or release the information, which you have labeled Item 2, in accordance with that ruling.³ *See* Open Records Decision No. 673 (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).

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, 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)

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

³As we are able to make this determination, we need not address your arguments against disclosure of this information.

(governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The department explains the information at issue details “ongoing operations by the [d]epartment and other law enforcement agencies at the Texas border to protect, prevent, and respond to terroristic threats and other criminal activities.” The department states revealing the submitted information would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning the efforts of law enforcement to detect and prevent criminal activity on the border and harm border security efforts. Upon review, we find the department has demonstrated release of the remaining information would interfere with law enforcement. Thus, the department may withhold the remaining information under section 552.108(b)(1) of the Government Code.⁴

We understand the requestor to argue release of the information at issue is in the public interest, and that this interest outweighs the application of section 552.108. The legislature considered the public’s right to know when it enacted the Act. Information is presumed to be public and the public is entitled to such public information unless a governmental body shows that the information is within one of the Act’s exceptions. Gov’t Code §§ 552.001, .301. Here, the department has shown that section 552.108(b)(1) is applicable to the information at issue. By its language, section 552.108 does not require consideration of the public interest in the information. Such a consideration was contemplated by the legislature when it enacted section 552.108 to allow a governmental body to withhold an internal record or notation of a law enforcement agency or prosecutor 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. Thus, because the department has met its burden under section 552.108(b)(1) with regards to the information at issue, we find the department may withhold the information at issue under section 552.108(b)(1) of the Government Code.⁵

In summary, the department must rely on Open Records Letter No. 2015-17735 as a previous determination and withhold or release Item 2 in accordance with that ruling. The department may withhold the remaining information under section 552.108(b)(1) of the Government Code.

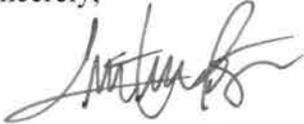
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁵As our ruling is dispositive for this information, we need not address the arguments against its disclosure.

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/akg

Ref: ID# 578908

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)