



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2015

Mr. William Schultz
Assistant District Attorney
Civil Division
Denton County Criminal District Attorney's Office
1450 East McKinney Street, Suite 3100
Denton, Texas 76202

OR2015-21914

Dear Mr. Schultz:

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# 588072.

Denton County (the "county") received a request for information regarding a named individual's use of her electronic access card to access government buildings during a specified time frame. You assert the county is not required to comply with this request pursuant to section 552.222 of the Government Code. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your claim that the county is not required to comply with the instant request for information. You inform us the county received the request via e-mail. You state the county has, via e-mail, asked the requestor to establish proper identification and the requestor has failed to do so. You assert that, pursuant to section 552.222(a) of the Government Code, the county is not required to provide the requested information until the requestor provides proper identification. Section 552.222 of the Government Code provides:

(a) The officer for public information and the officer's agent may not make an inquiry of a requestor except to establish proper identification or except as provided by Subsection (b), (c), or (c-1).

(b) If what information is request is unclear to the governmental body, the governmental body may ask the request to clarify the request . . . but the governmental body may not inquire into the purpose for which the information will be used.

(c) If the information requested relates to a motor vehicle record, the officer for public information or the officer's agent may require the requestor to provide additional identifying information[.]

(c-1) If the information requested includes a photograph described by Section 552.155(a), the officer for public information or the officer's agent may require the requestor to provide additional information[.]

Gov't Code § 552.222(b)-(c); Act of May 29, 2015, 84th Leg., R.S., ch. 835, § 2, 2015 Tex. Sess. Law Serv. 2487, 2488 (Vernon) (to be codified at Gov't Code § 552.222(a), (c-1)). Since a special right of access to information exists in some circumstances that requires that a requestor establish proper identification, the only permissible inquiry a governmental body may make of a requestor under the Act is to establish proper identification. *See* Act of May 29, 2015, 84th Leg., R.S., ch. 835, § 2, 2015 Tex. Sess. Law Serv. 2487, 2488 (Vernon); *See, e.g.*, Gov't Code § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). However, the identity of the requestor is generally not a factor to be considered when a governmental body receives an open record request. *See id.* § 552.223 (requiring uniform treatment of all open records requests). *But see id.* § 552.028 (governmental body not required to accept or comply with request for information from an individual who is imprisoned or confined in a correctional facility, or an agent of the individual other than that individual's attorney). You have not explained, nor can we discern from the submitted information, the reason identification would be necessary in this instance. Furthermore, failure to provide identification under section 552.222 is not grounds for a governmental body to refuse to respond to a request for public information. *See id.* § 552.222(b)-(c); Act of May 29, 2015, 84th Leg., R.S., ch. 835, § 2, 2015 Tex. Sess. Law Serv. 2487, 2488 (Vernon). Accordingly, the county may not withhold the submitted information on the basis of section 552.222.

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 also* Open Records Decision No. 531 at 2 (1989). 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 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, 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). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques, but was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 (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); *but see* 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).

The submitted information consists of individual access card data, which shows the date, time, and location for each time the named individual entered and exited a county building using her unique electronic access card. You state the building entrance used by the named individual is a secure entrance reserved for judges, elected officials, and licensed peace officers, and all other county employees must enter through a separate security checkpoint involving metal detectors and x-ray machines. You further state the county maintains this information for security and investigative purposes in case of a criminal incident within the building, and release of this information would interfere with law enforcement’s duty of maintaining the security of the secured entrances and parking lot. Based on your arguments and our review, we agree release of the submitted information would interfere with law enforcement. Accordingly, the county may withhold the submitted information under section 552.108(b)(1) of the Government Code.¹

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

¹As our ruling is dispositive, we do not address your other argument to withhold this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Berger", written over the printed name.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 588072

Enc. Submitted documents

c: Requestor
(w/o enclosures)