



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 16, 2015

Mr. John Biggins  
Assistant District Attorney & Legal Advisor  
Denton County Sheriff's Office  
127 North Woodrow Lane  
Denton, Texas 76205

OR2015-24107

Dear Mr. Biggins:

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# 587238.

The Denton County Sheriff's Office (the "sheriff's office") received a request for all policies and manuals of the sheriff's office and the jail. You state you will release some information. You claim some of the submitted information is not subject to the Act pursuant to section 552.027 of the Government Code. You claim portions of the submitted information are exempted from disclosure under sections 552.108, 552.139, and 552.152 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Section 552.027 of the Government Code provides as follows:

- (a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

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<sup>1</sup>We note the sheriff's office failed to comply with the procedural requirements of section 552.301 of the Government Code in raising section 552.139 of the Government Code. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request). Nonetheless, section 552.139 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the violation of section 552.301 by the sheriff's office, in requesting this decision.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. Upon review, we find you have failed to demonstrate the submitted information came from the type of commercial book or publication purchased or acquired by a governmental body for research purposes as contemplated by section 552.027. *See id.* § 552.027(a). Therefore, the submitted information is not subject to section 552.027, and must be released unless it falls within an exception to disclosure. *Id.* §§ 552.006, .021, .301, .302.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An 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 is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

*Id.* § 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 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). A governmental body claiming

subsections 552.108(a)(1) and (b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to information that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d 320; *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). 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).

The submitted information consists of the policies and procedures of the sheriff's office. You contend disclosure of certain portions of the submitted information would "expose our investigative techniques and procedures to the general public . . . and identify possible weaknesses in our procedures and/or facilities and undermine our law enforcement efforts." Based on your representations and our review, we find the information we marked would interfere with law enforcement. Accordingly, the sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code.<sup>2</sup> However, we find you have failed to demonstrate release of any portion of the remaining information would interfere with law enforcement or prosecution efforts in general. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code. Further, you have failed to explain release of the remaining information would interfere with a particular pending criminal investigation or prosecution. Accordingly, we find the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(1) to any portion of the remaining information and it may not be withheld on this basis.

Section 552.139 of the Government Code provides, in part:

- (a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides in part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). You assert the remaining information “contains specific details . . . of the computer system.” However, upon review, we find you have not demonstrated any of the remaining information relates to computer network security, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Further, we find you have failed to explain any of the information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.139 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances

pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

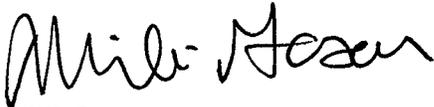
*Id.* § 552.152. You contend release of the remaining information would subject officers to harm by revealing certain information. Upon review, we find you have failed to demonstrate the release of the remaining information would subject an employee or officer to a substantial risk of physical harm. Accordingly, the sheriff's office may not withhold the remaining information under section 552.152 of the Government Code.

In summary, the sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The remaining information must be released.

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](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,



Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 587238

Enc. Submitted documents

c: Requestor  
(w/o enclosures)