



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 10, 2015

Mr. Renaldo Stowers
Senior Associate General Counsel
Office of General Counsel
The University of North Texas System
1155 Union Circle, #310907
Denton, Texas 76203

OR2015-25898

Dear Mr. Stowers:

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# 590322 (UNT PIR No. 003471).

The University of North Texas (the "university") received a request for all policy and procedure manuals of the University of North Texas Police Department (the "department"). You claim the submitted information is excepted from disclosure under sections 552.101, 552.108 and 552.110 of the Government Code and protected by copyright.¹ Additionally, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified the third parties of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered your arguments and reviewed the submitted

¹We note, and you acknowledge, the university did not comply with section 552.301 of the Government Code in raising section 552.110 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.110 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

representative sample of information.² We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we must address the requestor's claim the university failed to comply with the procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Pursuant to section 552.301(d) of the Government Code, a governmental body must, within ten business days of receiving the request for information, provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general. *Id.* § 552.301(d). Additionally, under section 552.301(e), a governmental body that seeks a decision is required to submit to the attorney general within fifteen business days of receiving the request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The university received the request for information on August 25, 2015.³ You state, and provide documentation showing, on September 9, 2015, the university provided the requestor with a cost estimate and a request for a deposit. *See id.* §§ 552.2615(a), .263(a). You also state, and provide documentation showing, the university received payment on September 15, 2015. Thus, September 15, 2015, is the date on which the university is deemed to have received the request. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond). Accordingly, the ten-business-day deadline for requesting a ruling from this office and notifying the requestor pursuant to section 552.301(d) was September 29, 2015, and the fifteen-business-day deadline was October 6, 2015. You provided the documentation required by section 552.301(b) in an envelope postmarked September 29, 2015, and the information required by section 552.301(e) in an envelope postmarked October 6, 2015. *See*

²We assume 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.

³We understand the university was closed on September 7, 2015, in observance of Labor Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act.

id. § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). The requestor states he was not properly notified pursuant to section 552.301(d) of the Government Code. Whether the university actually sent the requestor a copy of the university's letter to our office by September 29, 2015, or its brief pursuant to section 552.301(e) by October 6, is a question of fact. This office is unable to resolve factual disputes in the open records ruling process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. You state, and the submitted documentation reflects, the requestor was copied on the initial letter to our office, and the university's brief pursuant to section 552.301(e), concurrent with this information being sent to our office. Therefore, we find the university complied with the procedural requirements of section 552.301 of the Government Code in requesting this decision.

Next, although you raise section 552.110 of the Government Code for some of the submitted information, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address your argument under section 552.110. We also note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from any third party. Thus, no third party has demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)–(b); Open Records Decision Nos. 661 at 5–6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interests a third party may have in the information.

Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. *Id.* § 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.” *See 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). Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that 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, 525–26 (Tex. Civ. 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). However, this office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state some of the information at issue contains the tactics department police officers use when responding to various situations in which the department police officers’ and other individuals’ lives and safety could be compromised. You state the release of this information would interfere with the detection, investigation, and prosecution of crime. Upon review, we find the release of the information we marked would interfere with law enforcement and crime prevention. Accordingly, the university may withhold the information we have marked under section 552.108(b)(1) of the Government Code.⁴ However, the university has not demonstrated the release of the remaining information would interfere with law enforcement and crime prevention, and it may not withhold it under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses section 418.176 of the Government Code, which provides:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency[.]

⁴As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Gov't Code § 418.176(a). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under section 418.176. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Upon review, we find the university has failed to demonstrate any of the remaining information fits within the confidentiality provisions of section 418.176. Accordingly, the university may not withhold any of the remaining information under section 552.101 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.⁵ *See id.* § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service.

You claim portions of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the university may withhold the information we have marked under section 552.108(b)(1) of the Government Code. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The university must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,

A handwritten signature in black ink, appearing to read "JB" with a stylized flourish extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 590322

Enc. Submitted documents

c: Requestor
(w/o enclosures)

OHIA Law Enforcement
c/o Renaldo Stowers
Senior Associate General Counsel
Office of General Counsel
The University of North Texas System
1155 Union Circle, #310907
Denton, Texas 76203
(w/o enclosures)