



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 8, 2011

Ms. Judi S. Rawls  
Assistant City Attorney  
City of Beaumont  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2011-08116

Dear Ms. Rawls:

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# 420144 (OR-03-70).

The City of Beaumont (the "city") received a request for all e-mails sent to or received by a named officer for a specified period of time.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. You inform us you have notified counsel for the Beaumont Police Officer's Association (the "association") of the request and of the association's right to submit arguments to this office.<sup>2</sup> Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

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<sup>1</sup>We note the department sought and received clarification of this request. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>As of the date of this letter, the association has not submitted any comments to this office.

prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the e-mails you have marked relate to ongoing criminal investigations and prosecutions and that release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on your representations and our review, we find the city may withhold the e-mails we have marked under section 552.108(a)(1) of the Government Code.

We understand you to raise section 552.108(b)(1) of the Government Code for the remaining e-mails. 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. 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.” *See City of Ft. 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). This office has concluded that 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 indicate the remaining e-mails consist of information that pertains to undercover operations and surveillance techniques utilized by the city’s police department. We understand you to assert that release of this information would jeopardize police officer safety. Upon review, we find release of the remaining e-mails, which we have marked, would interfere with law enforcement and crime prevention. Accordingly, the city may withhold the remaining e-mails we have marked under section 552.108(b)(1).

In summary, the city may withhold the e-mails we have marked under section 552.108(a)(1) of the Government Code. The city may withhold the remaining e-mails we have marked 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.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bs

Ref: ID# 420144

Enc. Submitted documents

c: Requestor  
(w/o enclosures)