



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2014

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

OR2014-22890

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# 547169 (DPS PIR# 14-4132).

The Texas Department of Public Safety (the "department") received a request for all records listing department employees who signed non-disclosure agreements with the Harris Corporation, the United States Department of Justice, or the department regarding phone tracing devices or ISMI devices manufactured by the Harris Corporation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code.<sup>1</sup> You state release of the submitted information may implicate the interests of the Federal Bureau of Investigation ("FBI"). Accordingly, you state you notified the FBI of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from the FBI and the requestor. *See id.* We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>Although you raise section 552.305 of the Government Code, we note this is not an exception to public disclosure under the Act. *See* Gov't Code § 552.305. Rather, section 552.305 addresses the procedural requirements for notifying third parties their interests may be affected by a request for decision. *See id.*

Initially, the FBI asserts the submitted non-disclosure agreement and related documents are not responsive to the request for information because the request did not specifically request the actual non-disclosure agreement. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the department has reviewed its records and determined the documents it has submitted are responsive to the request. Thus, we find the department has made a good-faith effort to relate the request to information within its possession or control. Further, upon review, we agree the submitted information is responsive to the request for records listing department employees who signed non-disclosure agreements. Accordingly, we will determine whether the department must release the information at issue to the requestor under the Act.

Next, you inform us a portion of the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2012-16607 (2012). In that ruling, we determined the department may withhold the information at issue under section 552.108(b)(1) of the Government Code. You state the law, facts, and circumstances on which the prior ruling was based have not changed. Thus, the department may continue to rely on Open Records Letter No. 2012-16607 as a previous determination, and withhold the requested information that is identical to the information that was at issue in Open Records Letter No. 2012-16607 in accordance with that ruling. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will consider whether it is excepted under the Act.

The requestor asserts the requested information must be released because the FBI violated section 552.305(e) by failing to provide the requestor with a copy of its comments to this office. Section 552.305(d) states “[i]f release of a person’s proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision.” Gov’t Code § 552.305(d). Section 552.305(e) requires a person who submits a brief under subsection (d) to send a copy of the brief to the requestor. *See id.* § 552.305(e). We note that section 552.305(e) applies to third parties notified under section 552.305(d), which in this case is not the FBI. Accordingly, we will consider the submitted arguments against disclosure of the remaining information.

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

You state release of the remaining information in Tab A “would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning specialized electronic surveillance equipment utilized by the [d]epartment in the investigation and detection of crime, allowing suspects to avoid detection or apprehension, and risk the safety of the public.” Upon review, we find the department may withhold the remaining information in Tab A under section 552.108(b)(1) 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 [required public disclosure] 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.

Gov’t Code § 552.152. You state the information in Tab B reveals the names of department personnel who consistently operate in an undercover capacity. You state the release of this information would have a detrimental effect on current criminal investigations, hinder the role of undercover officers, and jeopardize the safety of the officers listed, as well as their families and fellow officers. Based on your representations and our review, we find section 552.152 is applicable to the information in Tab B. Accordingly, the department must withhold the information in Tab B under section 552.152 of the Government Code.

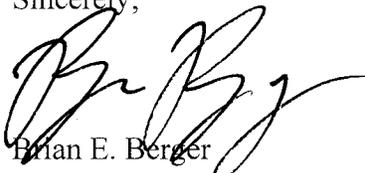
In summary, the department may withhold the requested information that is identical to the information that was at issue in Open Records Letter No. 2012-16607 in accordance with that ruling. The department may withhold the remaining information in Tab A under

section 552.108(b)(1) of the Government Code. The department must withhold the information in Tab B under section 552.152 of the Government Code.<sup>2</sup>

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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/ac

Ref: ID# 547169

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. W.L. Scott Bean III  
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U.S. Department of Justice  
Federal Bureau of Investigation  
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<sup>2</sup> As our ruling is dispositive, we do not address the remaining arguments against disclosure.