



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 2, 2016

Ms. Allison Bastian  
Assistant City Attorney  
Office of the City Attorney  
City of Brownsville  
1001 East Elizabeth Street, Suite 234  
Brownsville, Texas 78520

OR2016-05021

Dear Ms. Bastian:

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# 600906.

The City of Brownsville (the “city”) received a request for information pertaining to missing, lost, or stolen law enforcement-issued equipment during a specified time period and the city’s most recent “Fixed Asset Audit Report.” You state you do not have information responsive to the portion of the request seeking the city’s most recent “Fixed Asset Audit Report.”<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Although you also raise section 552.101 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See Gov’t Code §§ 552.301, .302.*

<sup>3</sup>We 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 those records contain substantially different types of information than that submitted to this office.

Section 552.108(b)(1) of the Government Code 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) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. 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 at 327 (Tex. App.—Austin 2002, no pet.). 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 of the Government Code 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 release of the submitted information “would only serve to undermine the confidence of the public in the police and therefore impair the ability of the [city’s police department (the “department”)] in its law enforcement duties.” You further state release of the submitted information would be detrimental to the morale of the department. You assert “it is also not hard to image how a criminally-inclined member of the public could use this information to circumvent police departmental safeguards, detect weaknesses, and undermine the ability of the [department] to protect the public[.]” Upon review, we find you have failed to demonstrate the release of any portion of the submitted information would interfere with law enforcement or prosecution efforts in general. Accordingly, the city may not withhold any of the submitted information under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>4</sup> *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of

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<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Criminal Procedure. Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

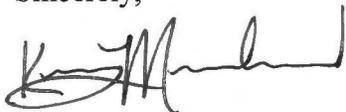
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a). Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The city must release the remaining information.

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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 600906

Enc. Submitted documents

c: Requestor  
(w/o enclosures)