



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 18, 2016

Ms. Leslie O. Haby  
Assistant Criminal District Attorney  
Civil Section  
Bexar County Criminal District Attorney's Office  
101 West Nueva Street  
San Antonio, Texas 78205

OR2016-23347

Dear Ms. Haby:

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# 630778 (BCDA File #5290).

The Bexar County Sheriff's Office (the "sheriff's office") received a request for all policies, procedures, rules, and standards of practice for employees of the sheriff's office. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.111 of the Government Code excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, we determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and

other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995). Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 157 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, section 552.111 protects the factual information. *See* Open Records Decision No. 313 at 3 (1982).

You state the submitted information is excepted from disclosure under section 552.111 of the Government Code because it consists of proposed revisions to the policy manual of the sheriff's office. You argue this information consists of "drafts and comments includ[ing] internal communications consisting of advice, recommendations, opinions[,] and other material that reflect the policymaking processes of the [sheriff's office]. Based on your representations and our review, we find you have demonstrated the information we have marked consists of advice, opinions, or recommendations on the policymaking matters of the sheriff's office. Accordingly, the sheriff's office may withhold the information we have marked under section 552.111 of the Government Code.<sup>1</sup> However, we find the remaining information consists of the existing policy manual of the sheriff's office. We find this information is purely factual or administrative, and does not consist of advice, opinions, or recommendations of the sheriff's office regarding policymaking matters. Consequently, the sheriff's office may not withhold the remaining information under section 552.111 of the Government Code.

Section 552.108(b) 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 (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). This section 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." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the

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<sup>1</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department's use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 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). However, to claim this aspect of section 552.108, a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, ORDs 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You contend releasing the remaining information “would seriously and irreparably impair the ability of the [sheriff's office] officers to arrest suspects and would place [suspects] at an advantage in confrontations with those officers, thus hindering the detection and investigation of crime.” Upon review, we find you have demonstrated release of some of the information at issue would interfere with law enforcement. Accordingly, the sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code.<sup>2</sup> However, you have failed to demonstrate the remaining information would interfere with law enforcement or crime prevention. Thus, the sheriff's office may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

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 prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108(a)(1) is generally not applicable to information that is purely administrative in nature and does not

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

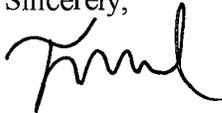
involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d 320; *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. —El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You provide no arguments that release of the remaining information at issue would interfere with the detection, investigation, or prosecution of crime. Consequently, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the remaining information, and we conclude the sheriff's office may not withhold the remaining information on that basis.

In summary, the sheriff's office may withhold the information we have marked under sections 552.111 and 552.108(b)(1) of the Government Code. The sheriff's office 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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 630778

Enc. Submitted documents

c: Requestor  
(w/o enclosures)