



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2010

Ms. Kelley Messer  
Assistant City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604-0060

OR2010-15723

Dear Ms. Messer:

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# 396948.

The Abilene Police Department (the "department") received a request for the department's use of force policy. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You inform us the department's standard operating procedures, which includes the use of force policy, were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-01244A (2009). In the previous ruling, we concluded the department may withhold some of the information under section 552.108(b)(1) of the Government Code, and the remaining information must be released. As there has been no change in the law, facts, and circumstances on which the previous ruling is based, the department may continue to rely on that ruling as a previous determination and withhold or release any previously ruled upon information in accordance with Open Records Letter No. 2009-01244A. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (listing elements of first type of previous determination under section 552.301(a)). We will address your argument for the portion of the submitted information that you inform us was added to the use of force policy after the issuance of the previous ruling and, thus, not the subject of that ruling.

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, 710 (Tex. 1977)). 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 writ). 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) 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) (Gov't Code § 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 the release of the information at issue would undermine police efforts to enforce the law and would reveal weaknesses of or limitations to officers. Based on your representations and our review, we agree the information you have marked may be withheld under section 552.108(b)(1) of the Government Code.

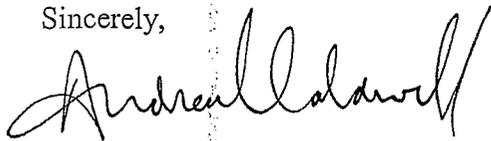
In summary, the department may continue to rely on Open Records Letter No. 2009-01244A as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The department may withhold the information you have marked under section 552.108(b)(1) of the 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,

A handwritten signature in black ink, appearing to read "Andrea L. Caldwell". The signature is fluid and cursive, with a large initial "A" and "C".

Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/em

Ref: ID# 396948

Enc. Submitted documents

c: Requestor  
(w/o enclosures)