



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2010

Mr. Charles D. Olson
Haley & Olson, P.C.
510 North Valley Mills Drive, Suite 600
Waco, Texas 76710

OR2010-16814

Dear Mr. Olson:

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# 399216.

The McGregor Police Department (the "department"), which you represent, received a request for 1) policies/general orders of the department; 2) specified personnel information pertaining to a named department officer; 3) copies of tickets given to employees of a named company for 2009; 4) amount of tickets written during specified time periods; and 5) department officer assignments. 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.

Initially, we note that you have only submitted information responsive to the first category of requested information. Thus, to the extent any information responsive to the remaining categories of the request existed and was maintained by the department on the date the department received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You claim that portions of the submitted general orders are excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency 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). Section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 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). This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques or procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under predecessor to section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (predecessor to 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). Generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under predecessor to section 552.108), 252 at 3 (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

You state that the general orders pertaining to use of force, arrests, investigation, handling of evidence, pursuit driving, special operations, and informants are excepted under section 552.108(b)(1). You contend that release of the use of force policies "could put officers at risk and could serve to exacerbate confrontations by subjects knowing just how far they can push a situation before a different level of force is used." You also state release of the use of force policies "would place an individual at advantage in confrontations with officers, and would increase the chances of the individual evading arrest or injuring the officers or others." You further state that "[d]isclosure of investigation, informant and evidence handling policies could result in interference with investigations." Finally, you assert that "[d]isclosure of pursuit policies could provide a blueprint for a suspect to follow in order to force officers to disengage." Based on these arguments and our review, we find that release of the information we have marked in the submitted general orders would

interfere with law enforcement. Accordingly, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. We find, however, that the department has not demonstrated that release of the remaining information would interfere with law enforcement or crime prevention. Thus, the remaining information is not excepted from disclosure under section 552.108. As no further exceptions are raised, the remaining information must be released to the requestor.

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, 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 399216

Enc. Submitted documents

c: Requestor
(w/o enclosures)