



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2011

Ms. Camila W. Kunau  
Assistant City Attorney  
City of San Antonio  
P. O. Box 839966  
San Antonio, Texas 78283-3966

OR2011-01971

Dear Ms. Kunau:

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# 408540 (COSA File No. 10-1909).

The City of San Antonio (the "city") received a request for the Standard Operating Procedures manual for the Sex Crimes and Family Violence units of the city's police department (the "department"). You state the city has released some of the requested information. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's argument that because the city previously released some of the requested information to him pursuant to a previous open records request, the city may not now withhold that information. We note the city seeks to withhold the entirety of the submitted manual under section 552.108. However, the city states in its brief that portions of the manual at issue, which the city marked in the submitted information, were previously released to this requestor pursuant to his previous open records request. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See id.* § 552.007; Open Records Decision Nos. 518 at 3 (1989), 400 at 2 (1983). Thus, the city

may not now withhold the information it previously released unless release of that information is expressly prohibited by law. Section 552.108 of the Government Code is a discretionary exception to disclosure under the Act and does not constitute a law that makes information confidential or expressly prohibits its release for purposes of section 552.007. *See* Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, because the city previously released portions of the submitted information, those portions, which the city has marked, may not be withheld under section 552.108 of the Government Code. As the city does not assert any other exceptions to disclosure of the marked information, it must be released to the requestor.

You assert the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An 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 is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You argue the remaining portions of the Standard Operating Procedures manual may be withheld from disclosure under section 552.108(a)(1). You generally state the remaining information "currently applies to 744 active felony investigations . . . as well as over 1,000 active misdemeanor cases." However, you do not inform us how the remaining information pertains to specific ongoing criminal investigations or prosecutions. Further, you have failed to explain how the release of any of the remaining information would interfere in some way with the detection, investigation, or prosecution of a particular crime. Thus, the city may not

withhold any of the remaining information under section 552.108(a)(1) of the Government Code. However, based upon your arguments and citations in your brief to this office, we understand you to assert section 552.108(b)(1) also applies to the remaining information. Thus, we will address the applicability of this exception to the information at issue.

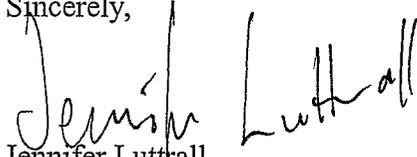
Section 552.108(b)(1) of the Government Code encompasses internal law enforcement and prosecution records, the release of which would interfere with ongoing law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). To claim section 552.108(b)(1), 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). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested 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). Upon review of your arguments and the information at issue, we find the city has demonstrated that release of some of the remaining information, which we have marked, would interfere with law enforcement and crime prevention. Accordingly, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find the city has failed to demonstrate that release of the remaining information at issue would interfere with law enforcement and crime prevention. Therefore, the city may not withhold any of the remaining information under section 552.108(b)(1).

In summary, the city must release the information it marked pursuant to section 552.007 of the Government Code. The city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The remaining information must be released.

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 cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned above the printed name.

Jennifer Luttrall

Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 408540

Enc. Submitted documents

c: Requestor  
(w/o enclosures)