



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2011

Mr. Adam C. Falco
Senior Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2011-07181

Dear Mr. Falco:

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# 419305.

The City of College Station (the "city") received a request for the city's police department policy manual. You state the city has released some of the requested information, but claim some of 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.

Section 552.108 of the Government Code provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(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 the requirements of Section 552.021 if:

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

Gov't Code § 552.108(a)(1)-(2), (b)(1).

Section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not inform us the information at issue pertains to an ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime; therefore, you have not met your burden under section 552.108(a)(1). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. You do not inform us the information at issue pertains to a criminal investigation that has concluded. Thus, you have also not met your burden under section 552.108(a)(2). Accordingly, the city may not withhold any of the information at issue under section 552.108(a)(1) or 552.108(a)(2).

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." *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 this aspect of section 552.108 protection, however, 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(b)(1). *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

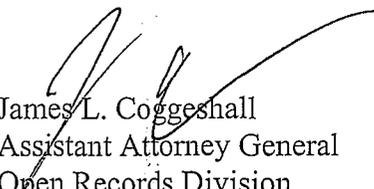
protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) 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).

You inform us of the information at issue consists of "policies and procedures relating to various sensitive issues police officers are exposed to as they conduct their duties on a daily basis." You argue the release of these procedures "would place an individual at an advantage in confrontations with the police[,] would increase the chance of evading arrest or injuring officers or others[,] and would hurt in law enforcement and crime prevention." After reviewing the information at issue and your arguments and representations, we find you have established the release of some of the submitted information would interfere with law enforcement. Thus, the city may withhold the information we have marked under section 552.108(b)(1). However, we find the city has not established that the release of the remaining information would interfere with law enforcement or crime prevention; therefore, the city may not withhold this information under section 552.108(b)(1). Instead, the city must release the remaining information 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 419305

Enc. Submitted documents

c: Requestor
(w/o enclosures)