



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2011

Ms. Margaret Ward  
For City of Burkburnett  
Shotts, Trevino, & Guevara LLP  
2237 Hillside Drive  
San Angelo, Texas 76904

OR2011-10761

Dear Ms. Ward:

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# 424980.

The City of Burkburnett (the "city"), which you represent, received a request for the following information: (1) certain policies and procedures regarding the use of city vehicles and the transportation of prisoners; (2) dispatch logs and radio recordings on a certain date related to the transportation of prisoners; and (3) certain disciplinary records. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the submitted audio recordings were the subject of a previous request, in response to which this office issued Open Records Letter No. 2011-05282 (2011). In that ruling we determined the city may withhold the submitted audio recordings under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-05282 was based have changed. Therefore, the city may continue to rely on Open Records Letter No. 2011-05282 as a

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<sup>1</sup>Although you raise section 552.111 of the Government Code, you make no arguments to support this exception. Accordingly, we find the city has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested). Additionally, although you raise section 552.101 of the Government Code, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. *See id.* §§ 552.301, .302.

previous determination and withhold the submitted audio recordings in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). As to the remaining information, we will consider your claimed exceptions.

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 must reasonably 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). You state, and provide a representation from the police department supporting the assertion, the information submitted as Exhibit D relates to a pending prosecution and release of the information could interfere with that prosecution. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the city may withhold the information submitted as Exhibit D under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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 (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 Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (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) (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). Section 552.108(b)(1) is not

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<sup>2</sup> As our ruling is dispositive, we do not address your argument under section 552.130 of the Government Code.

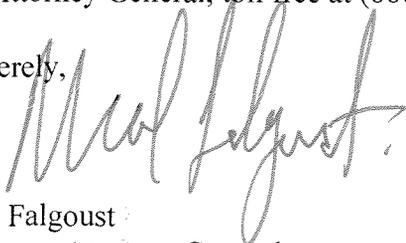
applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). You state the information submitted as Exhibit C consists of internal police department policies related to the emergency operation of law enforcement vehicles. You state the release of this information would reveal the procedures used in responding to emergency situations, thereby risking officer and public safety, and would provide individuals engaged in criminal activity with knowledge of emergency response procedures. Upon review, we find the information we have marked consists of internal records of a law enforcement agency that, if released, 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. The city has not demonstrated how the release of the remaining information in Exhibit C would interfere with law enforcement or crime prevention. Thus, the city may not withhold the remaining information under section 552.108(b)(1) of the Government Code.

In summary, the city may continue to rely on Open Records Letter No. 2011-05282 as a previous determination and withhold the submitted audio recordings in accordance with that ruling. The city may withhold the information submitted as Exhibit D under section 552.108(a)(1) 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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/tf

Ref: ID# 424980

Enc. Submitted documents

c: Requestor  
(w/o enclosures)