



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2012

Ms. L. Carolyn Nivens
Paralegal
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2012-18375

Dear Ms. Nivens:

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# 470955 (Ross Banks File No. 3607-1; LCPD Reference No. 2227).

The League City Police Department (the "department"), which you represent, received a request for all information related to the department's policies regarding no-knock entrances. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note most of the submitted information, which we have marked, is not responsive because it does not consist of information related to the department's policies regarding no-knock entrances. The department need not release non-responsive information in response to the request, and this ruling will not address that information.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" *Id.* § 552.108(b)(1). 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 (Tex. App.—Austin 2002, no pet.). 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) (construing statutory predecessor). This office has concluded 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 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 508 (1988) (release of dates of future prison transfer could impair security), 252 (1980) (section 552.108 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). 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 state the responsive information relates to department policies, the release of which would interfere with the department’s ability to conduct thorough investigations. Based on your representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated release of any of the remaining information at issue would interfere with law enforcement or crime prevention. We, therefore, conclude the department may not withhold any of the remaining responsive information under section 552.108(b)(1) of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov’t Code § 552.152. You assert release of the remaining responsive information would give individuals an advantage in confrontations with the police and subject officers to possible threats of physical harm. Upon review, we find you have not demonstrated release of the information at issue would subject an officer to a substantial risk of physical harm.

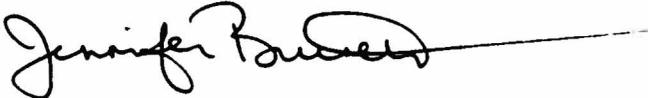
Accordingly, the department may not withhold the any of the remaining responsive information under section 552.152 of the Government Code.

In summary, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The department must release the remaining responsive information.

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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal line extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 470955

Enc. Submitted documents

c: Requestor
(w/o enclosures)