



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2013

Mr. Ronald J. Bounds
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2013-04160

Dear Mr. Bounds:

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# 481129 (CCPD File Number AEI12).

The Corpus Christi Police Department (the "department") received two requests from the same requestor for the department's policy manual and general rules manual. You state you will make portions of the requested information available to the requestor. You claim portions of the submitted information are 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.

Initially, you state a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-20266 (2012). In that ruling, we held the department must withhold portions of the department policy at issue under section 552.108(b)(1) of the Government Code and release the remaining portions of the policy. As we have no indication the law, facts, or circumstances upon which the prior ruling was based have changed, the department may continue to rely on Open Records Letter No. 2012-20266 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as the law, facts, and circumstances upon which prior ruling is 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 that

information is or is not excepted from disclosure). We will address your arguments for the information not subject to Open Records Letter No.2012-20266.

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[.]” Gov’t Code § 552.108(b)(1); *see* Open Records Decision No. 531 at 2 (1989). 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). 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 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 applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 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 you have marked under section 552.108(b)(1) concerns procedures that are not commonly known to the general public, whose release would “give advantages to criminal suspects when officers confront armed individuals” and “allow such individuals to . . . avoid criminal detection and endanger ongoing high risk operations.” Based on these representations and our review, we determine release of the information we have marked would interfere with law enforcement. Therefore, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, upon review, we find you have failed to demonstrate how release of the remaining information you have marked would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining information at issue under section 552.108(b)(1) of the Government Code.

You also seek to withhold the remaining information at issue under section 552.152 of the Government Code, which 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. Upon review, we find you have not demonstrated release of the remaining information at issue would subject an employee or officer to a substantial risk of physical harm. Accordingly, the department may not withhold any portion of the remaining information under section 552.152 of the Government Code.

In summary, the department may continue to rely on Open Records Letter No. 2012-20266 as a previous determination and withhold or release the information at issue in accordance with that ruling. 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 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 481129

Enc. Submitted documents

c: Requestor
(w/o enclosures)