



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 23, 2013

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2013-06683

Dear Ms. Cost:

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# 484856 (DPS PIR No. 13-0444).

The Texas Department of Public Safety (the "department") received a request for the following categories of information: (1) all information concerning a specified incident occurring on October 25, 2012; (2) department policies governing use-of-force, including deadly force and helicopter shooting policies; and (3) the employee file of a named department tactical flight officer, including any and all disciplinary actions. You indicate that certain information is being made available to the requestor on payment of applicable charges, including records from the named officer's personnel file. You additionally assert that a portion of the responsive information is subject to a previous ruling from this office, Open Records Letter No. 2013-01248 (2013). 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.

Initially, you note a portion of the requested information is subject to a previous ruling from this office. In Open Records Letter No. 2013-01248 (2013), this office ruled on information pertaining to the same specified incident, as well as use-of-force policies and personnel records, and determined portions of the information were excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We additionally note that a portion of the requested information may have been subject to another ruling from our office, Open Records Letter No. 2013-04077 (2013), which also related to requests pertaining to the shooting incident specified in the instant request. In Open Records Letter No. 2013-04077, we ruled that the department must continue to rely on Open Records Letter No. 2013-01248 as a previous determination and withhold or release the information subject

to that ruling in accordance with that ruling, and may withhold the remaining information at issue under section 552.108(a)(1). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the department must rely on Open Records Letter Nos. 2013-01248 and 2013-04077 as previous determinations and withhold or release the identical information in accordance with those rulings. *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 that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous rulings, we will consider the submitted argument against its disclosure.

Section 552.108(b) of the Government Code provides in pertinent part:

(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(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, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). 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 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that section 52.108 excepts sketch showing security measures for execution).

You state the release of the submitted After Action Report “would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning the techniques used by the Texas Rangers Special Weapons and Tactics Team (SWAT) and other law enforcement personnel that responded to this [particular] incident and the

vulnerabilities of law enforcement personnel in handling these types of encounters.” You also state disclosure would “hamper the ability of law enforcement to candidly evaluate their response in operations of this type[,]” which would “result in increased risk to law enforcement personnel and involved citizens.” Based on your representation and our review, we agree the release of this information would interfere with law enforcement or crime prevention. Accordingly, the department may withhold the submitted After Action Report of the incident at issue under section 552.108(b)(1) of the Government Code.

In summary, the department must continue to rely on Open Records Letter Nos. 2013-01248 and 2013-04077 as previous determinations and withhold or release identical information in accordance with those rulings. The department may withhold the submitted After Action Report under section 552.108(b)(1) of the Government Code.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 484856

Enc. Submitted documents

c: Requestor
(w/o enclosures)