



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 12, 2013

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2013-15884

Dear Ms. Sims:

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# 499186.

The City of Lubbock (the "city") received a request for information related to the policies and procedures of the city's police department (the "department"). You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-13168 (2012). In that ruling, we determined the department may withhold the information we marked under section 552.108(b)(1) of the Government Code and must release the remaining information at issue. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the city may rely on Open Records Letter No. 2012-13168 as a previous determination and withhold or release the identical information 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 that information is or is not excepted from disclosure).

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)). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. 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 pet.). This office has concluded section 552.108(b)(1) 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 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 have marked "tactical information" within the submitted documents, which you assert, if released, could endanger the lives of department officers and give an advantage to criminals or suspects in criminal cases. You argue release of the marked information would give clear advantages to criminals in knowing how the officers are to handle particular contacts, execute warrants, and conduct searches. You explain if this information were made public, it would allow criminals to exploit any weaknesses in officer training and how officers are told to handle various situations. You further argue knowing these policies could allow criminals to anticipate aspects of police searches and warrants to evade arrest, hide evidence, and create dangerous situations for officers. You also state release of the information would reveal when and how officers use nonlethal weapons and less-than-deadly force, and when officers are allowed to discharge deadly weapons, giving criminals an advantage in confrontations with police officers. Thus, you argue release of the information you marked would result in danger to police officers and to the public at large. 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 city may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated how any of the remaining information you have marked would interfere with law enforcement or crime prevention. Accordingly, the city may not withhold any of the remaining information you marked under section 552.108(b)(1).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. You assert portions of the remaining information are made confidential by sections 418.176 and 418.182 of the Government Code. Section 418.176 provides, in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

...

(2) relates to a tactical plan of the [emergency response] provider[.]

*Id.* § 418.176. Section 418.182 provides, in relevant part,

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

*Id.* § 418.182(a). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You assert some of the remaining information you marked consists of tactical plans for the prevention, detection, response, or investigation of terrorism or similar activities. Upon review, we find you have not demonstrated how any of the remaining information at issue relates to tactical plans of emergency response providers. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

You also assert some of the remaining information you marked includes the operating procedures the department has enacted to protect its building from criminal activity or terrorism. Upon review, we find you have not demonstrated how any of the remaining information at issue relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.

In summary, the city may rely on Open Records Letter No. 2012-13168 as a previous determination and withhold or release the identical information in accordance with that ruling. The city may withhold the information we 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 499186

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)