ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2013

Ms. Patricia Fleming
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2013-20258

Dear Ms. Fleming:

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# 506639.

The Texas Department of Criminal Justice (the "department") received a request for the unit classification procedures manual. You state the department has made or will make some of the requested information available to the requestor. You claim 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, we note some of the requested information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-12233 (2009) and 2010-05426 (2010). In Open Records Letter No. 2009-12233, we concluded the department must release the submitted information. In Open Records Letter No. 2010-05426, we concluded the department may withhold the submitted information under section 552.108(b)(1) of the Government Code. There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, to the extent the information responsive to the current request is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter No. 2009-12233 as a previous determination and release the identical information in accordance with that ruling, and may continue to rely on Open Records Letter No. 2010-05426 as a previous determination and withhold 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 information is or is not excepted from disclosure).

We note section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision No. 586 (1991) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, to the extent any portion of the submitted information was previously released in accordance with Open Records Letter No. 2009-12233, the department may not now withhold such information under section 552.108. However, we will address your argument under this exception for any information that was not released in accordance with Open Records Letter No. 2009-12233.

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 City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (Gov't Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable 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 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You argue release of the submitted information would provide an opportunity for sensitive information to be forged, thereby creating a security risk. You further indicate release of the submitted information would cause a serious threat of harm to prison security and public

safety. Specifically, you argue release of the department's pre-printed classification documents creates an inherent risk the documents could be manipulated, thereby providing an opportunity for violent offenders to be released or transferred, allowing them to commit further acts of violence. Based on your arguments and our review of the submitted information, we agree release of this information would interfere with law enforcement. Accordingly, to the extent the submitted information was not previously released, the department may withhold the submitted information from disclosure under section 552.108(b)(1) of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2009-12233 as a previous determination and release the identical information in accordance with that ruling, and may continue to rely on Open Records Letter No. 2010-05426 as a previous determination and withhold the identical information in accordance with that ruling. To the extent the submitted information was not previously released, the department may withhold the submitted information from disclosure 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.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,

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 506639

Enc. Submitted documents

c: Requestor
(w/o enclosures)