



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 26, 2014

Mr. Daniel Ortiz  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2014-03476

Dear Mr. Ortiz:

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# 515028 (El Paso ID# 13-1026-3878).

The City of El Paso (the "city") received a request for the current policies of the city's police department (the "department") and information regarding complaints and disciplinary actions pertaining to a named former employee. You state you have released some of the requested information. You claim 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.

The submitted information consists of the department's policy manual (the "manual"). We note the manual was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-14987 (2010). In that ruling, we concluded portions of the manual are excepted from disclosure under section 552.108(b)(1) of the Government Code. However, we note portions of the manual have been revised since the previous ruling was issued. Accordingly, we find the facts and circumstances on which the previous ruling was based have changed with regard to these revised portions of the manual. Therefore, we find the city may not follow Open Records Letter No. 2010-14987 with regard to that information. However, for those portions of the submitted information that have not been revised since the previous ruling was issued, the city must release or withhold the

information at issue in accordance with Open Records Letter No. 2010-14987.<sup>1</sup> See Gov't Code § 552.301(f); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). With regard to those portions of the manual that have been revised, we will consider your arguments against disclosure.

You seek to withhold the remaining information in the manual under sections 552.108(a)(1) and 552.108(b)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. See *id.* § 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Upon review, you have not demonstrated how any of the information at issue pertains to any specific ongoing criminal investigation or prosecution, nor have you explained how its release would interfere with the detection, investigation, or prosecution of a particular crime. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to any of the information at issue, and the city may not withhold any of the information on that basis.

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 also Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). 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 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 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to

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<sup>1</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

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).

You state release of the submitted information would “unduly interfere with the law enforcement function of the department” because it would reveal “detailed tactical procedures, strategy and law enforcement techniques maintained for the purpose of preventing, detecting, responding to and investigating criminal activity.” Based on your representations and our review, we find the city has demonstrated release of some of the information at issue would interfere with law enforcement. Accordingly, the city may withhold the information we have highlighted under section 552.108(b)(1) of the Government Code. However, we find the city has not demonstrated the release of any of the remaining information would interfere with law enforcement or crime prevention. Therefore, none of the remaining information may be withheld under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the “HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to an act of terrorism or relating criminal activity confidential. Section 418.176 of the Government Code 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 provider[.]

*Id.* § 418.176(a)(2). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

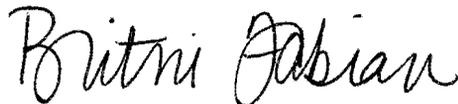
Upon review, we find you have failed to establish the remaining information relates to a tactical plan of the provider. Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.176(a)(2) of the Government Code.

In summary, the city must withhold or release the submitted information that was at issue in Open Records Letter No. 2010-14987 in accordance with that ruling. The city may withhold the information we have highlighted 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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/tch

Ref: ID# 515028

Enc. Submitted documents

c: Requestor  
(w/o enclosures)