



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2014

Mr. John Schneider
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501-0672

OR2014-19974

Dear Mr. Schneider:

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# 542120 (Pasadena ID# SL1431).

The City of Pasadena (the "city") received a request for (1) an electronic database of all vehicles owned, operated, and/or maintained by the city's police department, (2) an electronic database of all firearms, body armor, vehicles, and ammunition used in field operations purchased during a specified time period, and (3) an electronic list of all equipment currently owned or maintained for use in SWAT operations or activities. You state the city will provide some of the requested information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹Although you originally raised sections 552.101 and 552.130 of the Government Code, you have not submitted arguments explaining how these sections apply to the requested information. Therefore, we assume you have withdrawn these claims. *See* Gov't Code §§ 552.301, .302.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The information we have marked is subject to section 552.022(a)(3) of the Government Code because it consists of information relating to the expenditure of public funds by the city's police department. The city must release this information under section 552.022(a)(3) unless the information is made confidential under the Act or other law. Although you raise section 552.108 of the Government Code, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Thus, the city may not withhold the information subject to section 552.022 under section 552.108 of the Government Code. As you have not claimed any other exceptions to disclosure, the city must release the information we have marked.

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). 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 subsection 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), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure

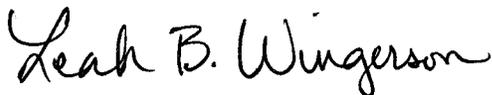
of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional 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).

The remaining information at issue consists of the city's police department's (the "department") inventory lists of SWAT vehicles, firearms, body armor, and other tactical equipment. You contend disclosure of this information would interfere with law enforcement efforts by impairing the department's ability to suppress and respond to crime. You have provided a statement from a representative of the department's SWAT team explaining release of the information at issue could enable criminals, or foreign and domestic terrorists, to develop countermeasures to the department's capabilities and "defeat [the department's] ballistic protection, which is solely provided to increase officer safety and survivability." Based on your arguments and our review of the information at issue, we agree release of the information would interfere with law enforcement. Accordingly, the city may withhold the remaining requested information under section 552.108(b)(1) of the Government Code.³

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 542120

Enc. Submitted documents

c: Requestor
(w/o enclosures)