



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 25, 2016

Ms. Jessica Richard Crawford
Assistant City Attorney
Office of the City Attorney
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

OR2016-23897

Dear Ms. Crawford:

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# 631774 (ORR No. 2016-422).

The New Braunfels Police Department (the "department") received a request for the department's policy manual. You claim the submitted 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 information.

Initially, we note the department only submitted information related to six department policies. To the extent additional responsive information existed and was maintained by the department at the time the department received the instant request for information, we assume the department has released it to the requestor. If not, then the department must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Section 552.108(b) 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

¹Although the department raises section 552.101 of the Government Code, it makes no arguments to support this exception. Therefore, we assume the department has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

matters relating to law enforcement or prosecution . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section 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.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You seek to withhold the submitted information under section 552.108(b)(1). You state the information at issue relates to the department’s policies and procedures for investigating crimes and enforcing criminal laws. You assert release of the information at issue would impair an officer’s ability to detect and prevent criminal activity and would harm police efforts. Further, you state release of the information at issue would enable individuals to counter law enforcement tactics and techniques, which could allow criminals to avoid detection and could impact law enforcement safety. Based on your representations and our review, we conclude the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find the department has not sufficiently demonstrated the release of the remaining information would interfere with law enforcement or crime prevention and may not withhold any of the remaining information under section 552.108(b)(1). As you raise no further exceptions to disclosure, the department must release the remaining information.

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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bhf

Ref: ID# 631774

Enc. Submitted documents

c: Requestor
(w/o enclosures)