



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 14, 2016

Ms. Andrea D. Russell
Counsel to the City of Burkburnett
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2016-25287

Dear Ms. Russell:

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# 634021.

The Burkburnett Police Department (the "department"), which you represent, received a request for one specified internal investigation, two specified case files, and five specified department policies. You state you will release some information. You state you will withhold certain information pursuant to sections 552.130 and 552.147 of the Government Code, as well as Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision. *See* ORD 684.

Initially, we note you have only submitted a video recording and some police procedures for our review. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, you state the submitted video recording was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-23532 (2016). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the department must continue to rely on Open Records Letter No. 2016-23532 as a previous determination and withhold or release the identical information at issue 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider your arguments against disclosure of the information not subject to the previous ruling.

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. *Id.* § 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 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 (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.” *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).

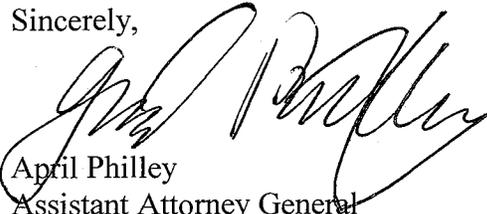
You state portions of the submitted information, which you have marked, would interfere with law enforcement or prosecution of crime if released. You state release of the information at issue would allow criminals to anticipate the actions of an officer, thus placing the officer at an increased risk of harm, and greatly interfere with the department's ability to prevent crime. Based on your representations and our review, we agree the department has demonstrated the release of the information you have marked would interfere with law enforcement. Accordingly, the department may withhold the information it has marked under section 552.108(b)(1) of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2016-23532 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. The department may withhold the information it marked under section 552.108(b)(1) of the Government Code. 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,



April Philley
Assistant Attorney General
Open Records Division

AP/akg

Ref: ID# 634021

Enc. Submitted documents

c: Requestor
(w/o enclosures)