



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 28, 2015

Ms. June B. Harden  
Assistant Attorney General  
Assistant Public Information Coordinator  
General Counsel Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2015-15362

Dear Ms. Harden:

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# 573299 (OAG PIR No. 15-41446).

The Office of the Attorney General (the "OAG") received a request for 1) materials prepared for use in presentations at two specified conferences, 2) correspondence pertaining to these presentations during a specified time period, and 3) a list of all conferences, seminars, or other gatherings that included a presentation on a specified topic by employees of the OAG. You state the OAG has released some of the requested information. You claim the remaining requested 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. We have also considered comments submitted by the requestor. *See Gov't Code* §552.304 (interested party may submit written comments to this office stating why information should or should not be released).

Initially, we understand the requestor to contend the submitted information was previously provided to members of the public at conferences for private citizens on two separate dates and is in the public domain. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential

under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *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). Section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. We have no indication the submitted presentations are the exact same presentations the requestor references in his comments. Further, the OAG states the submitted presentations "were created solely for and presented to a law enforcement audience." Whether the information at issue was released is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. As such, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Accordingly, we find section 552.007 of the Government Code is inapplicable to the submitted information, and we will consider the submitted arguments.

Section 552.108(b) 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 (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).

The OAG states the submitted information consists of PowerPoint presentations pertaining to gangs and a named subculture, and these presentations were created solely for and presented to a law enforcement audience by a member of the OAG's Criminal Prosecutions Division. The OAG states the information presented is still in use by the law enforcement community and release of the submitted information would "allow members of the public to anticipate and outwit current investigative and surveillance techniques" and undermine "law enforcement efforts to detect and prevent criminal gang activities." Upon review, we find the release of some of the submitted information would interfere with law enforcement. Therefore, the OAG may withhold this information, which we have marked, under section 552.108(b)(1) of the Government Code. However, we conclude the OAG has not established the release of the remaining information would interfere with law enforcement. Therefore, the OAG may not withhold any of the remaining information under section 552.108(b)(1). As you raise no other exceptions to disclosure, the OAG 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](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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLK/cz

Ref: ID# 573299

Enc. Submitted documents

c: Requestor  
(w/o enclosures)