



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 22, 2016

Mr. Jeffrey C. Monk
Administration Manager
Public Affairs-Open Records Unit
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

Ms. Kristie L. Lewis
HPD Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2016-18897

Dear Mr. Monk and Ms. Lewis:

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# 623587 (ORU No. 16-4252).

The Houston Police Department (the "department") received a request for information pertaining to three specified general orders. You state you have released some information to the requestor. You claim some of the submitted 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.

Initially, we note some of the requested information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2011-06183 (2011) and 2006-14725 (2006). We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, to the extent the requested information is identical to the information previously requested and ruled upon, the department may continue to rely on Open Records Letter Nos. 2011-06183 and 2006-14725 as previous determinations and withhold or release the identical information at issue in



accordance with those rulings. *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). However, to the extent the requested information is not subject to the previous rulings, we will consider your arguments against disclosure of the information at issue.

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 section 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 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 information at issue consists of the department’s general orders regarding confidential informants. You state “[t]he handling of [c]onfidential [i]nformants is one of the most sensitive areas of law enforcement” and release of certain portions of the submitted information would “undermine [the department’s] ability to successfully investigate crime[.]” You further explain release of this information could expose confidential informants to substantial danger, and thus, hinder their effectiveness. Based on your arguments and our review of the information at issue, we agree that release of most of the information you have marked would interfere with law enforcement. Accordingly, except for the information we have marked for release, the department may withhold the

information you have marked under section 552.108(b)(1). However, we find you have failed to demonstrate the remaining information at issue would interfere with law enforcement or crime prevention. Therefore, the department may not withhold the information we have marked for release under section 552.108(b)(1).

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the department may continue to rely on Open Records Letter Nos. 2011-06183 and 2006-14725 as previous determinations and withhold or release the identical information at issue in accordance with those rulings. Except for the information we have marked for release, the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code. As no other exceptions to disclosure have been raised, 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, 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/dls

Ref: ID# 623587

Enc. Submitted documents

c: Requestor
(w/o enclosures)