



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 12, 2017

Mr. Evaristo Garcia, Jr.  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2017-12845

Dear Mr. Garcia:

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# 661362 (PIR # W023770-032817).

The City of McAllen (the "city") received a request for three categories of information related to police operations. You state the city has no information responsive to a portion of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-01688 (2015). In Open Records Letter No. 2015-01688, we ruled the city may withhold the information we marked under section 552.108(b)(1) of the Government Code and must release the remaining information. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, the city may continue to rely on Open Records Letter No. 2015-01688 as a previous determination and withhold or

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

release the identical information in accordance with that ruling.<sup>2</sup> *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the city's arguments against release of the submitted information that is not encompassed by Open Records Letter No. 2015-01688.

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. Gov't Code § 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 the remaining information, if released, would interfere with law enforcement or prosecution of crime. You state the release of the information at issue would place "an individual. . . [at] an advantage in confrontations with the city's police officers and would increase the chance of evading arrest or resisting." Based on your representations and our review, we agree the release of some of the information at issue, which we marked, would interfere with law enforcement. Accordingly, the city may withhold the information we marked under section 552.108(b)(1) of the Government Code.<sup>3</sup> However, we find you have not demonstrated the release of any of the remaining information at issue would interfere

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<sup>2</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

<sup>3</sup>As our ruling is dispositive, we do not address the remaining argument against disclosure of this information.

with law enforcement or crime prevention. Accordingly, the city may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

You seek to withhold the remaining information under section 552.152 of the Government Code. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.


Gov't Code § 552.152. Upon review, we find you have failed to demonstrate the release of the remaining information would subject an employee or officer of the city to a substantial risk of physical harm. Accordingly, the city may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the city may continue to rely on Open Records Letter No. 2015-01688 as a previous determination and withhold or release the identical information in accordance with that ruling. The city may withhold the information we marked under section 552.108(b)(1) of the Government Code. The city 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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/bw

Ref: ID# 661362

Enc. Submitted documents

c: Requestor  
(w/o enclosures)