



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2017

Ms. Leticia Brysch
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2017-16658

Dear Ms. Brysch:

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# 667391 (PIR# 8691).

The City of Baytown (the "city") received a request for the Baytown Police Department Policy and Manual.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹We note you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). We understand the city received the required deposit on May 4, 2017. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

²We note the city did not comply with section 552.301(b) of the Government Code in asserting sections 552.101 and 552.152 of the Government Code. *See* Gov't Code § 552.301(b). Nevertheless, because sections 552.101 and 552.152 can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of these sections to the submitted information. *See id.* §§ 552.007, .302, .352.

Initially, you state some of the requested information was subject of previous rulings from this office. In Open Records Letter No. 2016-13061 (2016), this office ruled, in relevant part, the city may withhold information we marked in BPD-GO 05.23 under section 552.108(b)(1) of the Government Code and must release the remaining information. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, the city must continue to rely on Open Records Letter No. 2016-13061 as previous determination in regards to BPD-GO 05.23 and withhold or release the previously ruled upon information in BPD-GO 05.23 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).

In Open Records Letter No. 2016-13615 (2016), this office ruled, in relevant part, the city may withhold information we marked in BPD-GO 05.06 and BPD-GO 05.08 under section 552.108(b)(1) of the Government Code and must release the remaining information. In regards to BPD-GO 05.08, we note the law, facts, and circumstances have not changed, and the city must continue to rely on Open Records Letter No. 2016-13615 as a previous determination and withhold or release the previously ruled upon information in BPD-GO 05.08 in accordance with that ruling. *See* ORD 673. However, we note the current version of BPD-GO 05.06 submitted by the city in response to the current request was created after the date the previous ruling was issued. Thus, we note the facts and circumstances surrounding the information at issue in BPD-GO 05.06 have changed since Open Records Letter No. 2016-13615 was issued and the city may not rely on Open Records Letter No. 2016-13615 as a previous determination with respect to BPD-GO 05.06. *See id.* Accordingly, we will address your arguments against disclosure of the information at issue.

In Open Records Letter No. 2016-19697 (2016), this office ruled, in relevant part, the city may withhold information we marked in BPD-GO 05.06 under section 552.108(b)(1) of the Government Code and must release the remaining information. However, we note the current version of BPD-GO 05.06 submitted by the city in response to the current request was created after the date the previous ruling was issued. Thus, we note the facts and circumstances surrounding the information at issue in BPD-GO 05.06 have changed since Open Records Letter No. 2016-19697 was issued and the city may not rely on Open Records Letter No. 2016-19697 as a previous determination with respect to BPD-GO 05.06. *See id.* Accordingly, we will address your arguments against disclosure of the information at issue.

In Open Records Letter No. 2016-25719A (2017), this office ruled, in relevant part, the city may withhold the information we marked in BPD-GO 05.05, BPD-GO 07.01, and BPD-GO 07.03 under section 552.108(b)(1) Government Code and must release the remaining information. We note you now seek to withhold additional information in BPD-GO 05.05 under section 552.108(b)(1) of the Government Code. Section 552.007 of the Government

Code provides information that has been voluntarily released to a member of the public 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; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the city may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision No. 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold the previously released information in BPD-GO 05.05 under section 552.108 of the Government Code. However, you now raise section 552.101 of the Government Code for the previously released information in BPD-GO 07.03. As section 552.101 makes information confidential, we will consider the applicability of this section to the previously released information in BPD-GO 07.03. However, in regards to BPD-GO 05.05 and BPD-GO 07.01, we note we have no indication the law, facts, or circumstances upon which this ruling was based have changed. Accordingly, the city must continue to rely on Open Records Letter No. 2016-25719A as a previous determination and withhold or release the previously ruled upon information in BPD-GO 05.05 and BPD-GO 07.01 in accordance with that ruling. *See* ORD 673.

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. 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, 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.*, 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).

You state the information you marked in Exhibit E relates to the “processes and procedures that police officers are to undertake when conducting their duties as it relates to traffic enforcement, arrests, and other hazardous/high risk situations, along with critical special units, weapons, and equipment that assist” the city’s police department in law enforcement. Further, you state that release of this information would “permit private citizens to anticipate weaknesses in [the city’s police department] and officers, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this jurisdiction.” 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 and indicated under section 552.108(b)(1) of the Government Code.³ However, we find you have not demonstrated how any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the city may not withhold any of the remaining information in Exhibit E under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information other statutes make confidential, including section 418.176 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.176 provides, in part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). The fact that information may generally be related to a governmental body’s security concerns or emergency preparedness does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.176 must adequately explain how the

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Upon review, we find you have not demonstrated the remaining information was created for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity; that it relates to the staffing requirements or tactical plan of an emergency response provider; or that it consists of a list or compilation of pager or telephone numbers of an emergency response provider. Consequently, the remaining information is not confidential under section 418.176(a), and the city may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.152 of the Government Code 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.

Id. § 552.152. Upon review, we find you have failed to demonstrate the release of the remaining information would subject an employee or officer 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.

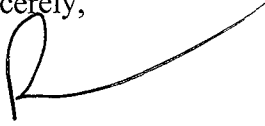
In summary, the city must continue to rely on (1) Open Records Letter No. 2016-13061 as previous determination in regards to BPD-GO 05.23 and withhold or release the previously ruled upon information in accordance with that ruling; (2) Open Records Letter No. 2016-13516 as a previous determination in regards to BPD-GO 05.08 and withhold or release the previously ruled upon information in accordance with that ruling; and (3) Open Records Letter No. 2016-25719A as a previous determination in regards to BPD-GO 05.05 and BPD-GO 07.01 and withhold or release the previously ruled upon information in accordance with that ruling. The city may withhold the information we marked and indicated under section 552.108(b)(1) of the Government Code. 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,

A handwritten signature in black ink, appearing to be 'P. Mehaffy', with a long horizontal stroke extending to the right.

Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 667391

Enc. Submitted documents

c: Requestor
(w/o enclosures)