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ATTORNEY GENERAL OF TEXAS

June 5, 2019

Mr. Austin R. Beck
Counsel for the City of Terrell Hills
Davidson, Troilo, Ream & Garza, P.C.
601 NW Loop 410, Suite 100
San Antonio, Texas 78216-5511

OR2019-14845

Dear Mr. Beck:

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# 769074.

The City of Terrell Hills (the "city"), which you represent, received a request for information pertaining to specified auditors or activists, including specified terms.¹ The city claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the City of San Antonio. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation

¹The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The city states Exhibit B pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold Exhibit B under section 552.108(a)(2) of the Government Code.

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 (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 city asserts the release of the remaining information “would interfere with law enforcement by alerting potential criminal actors to law enforcement intelligence and tactics,

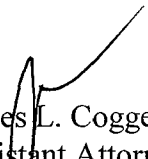
affording them an opportunity to alter known identities and tactics in order to engage in criminal activity while frustrating the efforts of law enforcement personnel.” Upon review, we find the release of the remaining information would interfere with law enforcement. Therefore, the city may withhold the remaining information under section 552.108(b)(1) of the Government Code.²

In summary, with the exception of basic information, which the city must release, the city may withhold Exhibit B under section 552.108(a)(2) of the Government Code. The city may withhold the remaining information under section 552.108(b)(1) of the Government Code.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 769074

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address the other arguments to withhold this information.