



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2019

Mr. Evan D. Reed
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2019-23307

Dear Mr. Reed:

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# 781592 (City Reference # 19-1026-10492).

The City of El Paso (the "city") received a request for bulletins, warnings, alerts, and reports pertaining to a specified hacking group and specified type of hacking groups as well as information generated as a result of the actions of the specified type of hacking group during a specified time period. You state the city does not have information responsive to portions of the request.¹ You claim the submitted information is excepted from disclosure under section 552.108 and 552.139 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(b) 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,

¹ We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

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 states the submitted information consists of records compiled by the city’s police department pertaining to “computer crimes and recommended methods to both monitor and combat them.” The city argues release of the submitted information “would hamper governmental cybersecurity operations and could compromise current strategies for preventing cyberattacks” as well as “enable the public, particularly the criminal organizations whom this information is about, to disrupt government operations and to anticipate and thwart government responses.” Upon review, we find the release of the submitted information would interfere with law enforcement. Therefore, the city may withhold the submitted information under section 552.108(b)(1) of the Government Code.²


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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

² As our ruling on this information is dispositive, we need not address the city’s remaining arguments against disclosure.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,


Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 781592

Enc. Submitted documents

c: Requestor
(w/o enclosures)