



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2019

Mr. Jeffrey L. Moore
Counsel for the City of Roanoke
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2019-23546

Dear Mr. Moore:

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# 782176.

The Roanoke Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident involving the requestor, personnel information pertaining to a named police officer, and specified department policies and procedures.¹ You state the department has 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, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2015-23687 (2015). In that ruling, we determined the department may withhold the information we marked under section 552.108(b)(1) of the Government Code and must release the

¹ We note the department sought and received clarification of the information requested. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

remaining information. You state the law, facts, and circumstances on which the prior ruling was based have not changed. Thus, the department may continue to rely on Open Records Letter No. 2015-23687 as a previous determination and withhold or release the information at issue 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).

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). 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.). Rather than merely making a conclusory assertion that releasing the information would interfere with law enforcement, the governmental body claiming section 552.108(b)(1) 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)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Record Decision No. 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment). However, section 552.108(b)(1) is not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (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).

We note the remaining information consists of a portion of the department’s policy manual. You state release of the information at issue would provide individuals with “an advantage in confrontations with [c]ity police officers and would increase [their] chances of evading arrest.” You further state release of the information at issue “could endanger the lives and safety of police officers.” Based on your representations and our review, we find you have demonstrated release of some of the information at issue, which we marked, would interfere with law enforcement and crime prevention. Accordingly, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Therefore, the department may not withhold any of the remaining information under section 552.108(b)(1).

In summary, the department may continue to rely on Open Records Letter No. 2015-23687 as a previous determination and withhold or release the information at issue in accordance with that ruling. The department may withhold the information we marked under section 552.108(b)(1) of the Government Code. The department 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 <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 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/be

Ref: ID# 782176

Enc. Submitted documents

c: Requestor
(w/o enclosures)