



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2019

Ms. Megan R. Santee
Counsel for the City of Bee Cave
Denton, Navarro, Rocha, Bernal & Zech, P.C.
2500 West William Cannon, Suite 609
Austin, Texas 78745-6438

OR2019-29076

Dear Ms. Santee:

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# 791789.

The City of Bee Cave (the "city"), which you represent, received a request for information pertaining to a complete inventory of firearms in the possession or under the control of the city or the city's police department. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.² Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

¹ Although the city also raises sections 552.101 and 552.130 of the Government Code, the city has not provided any arguments to support these exceptions. Therefore, we assume the city has withdrawn its claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code §§ 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body claiming subsections 552.108(a)(1) and (b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code § 552.301(e)(1)(A)*; *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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* (1989) (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 contend the information at issue consists of internal records that are maintained for use in law enforcement matters. You explain release of the information at issue will interfere with law enforcement daily operations. 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.³ However, we find you failed to demonstrate release of the remaining information would interfere with the detection,

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

investigation, or prosecution of crime. Further, you have not demonstrated 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 under section 552.108(a)(1) or 552.108(b)(1) of the Government Code.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An 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 is excepted from the [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication[.]

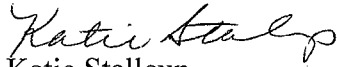
Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), (b)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Upon review, we find you have not demonstrated the remaining information at issue pertains to an investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, we find you have failed to demonstrate the applicability of either section 552.108(a)(2) or section 552.108(b)(2) to the remaining information. Therefore, the city may not withhold any of the remaining information under section 552.108(a)(2) or section 552.108(b)(2) of the Government Code.

In summary, 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 <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,


Katie Stallcup
Attorney
Open Records Division

AKS/eb

Ref: ID# 791789

Enc. Submitted documents

c: Requestor
(w/o enclosures)