



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 18, 2020

Ms. Marie N. Johnson
Counsel for the City of Venus
Messer, Fort & McDonald, P.L.L.C.
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2020-04981

Dear Ms. Johnson:

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# 812190 (ORR ID: V111919MB).

The Venus Police Department (the "department"), which you represent, received a request for certain training manuals and operating procedures or policies. You state the department does not have information responsive to some of the request.¹ You claim 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.

Section 552.108(b)(1) 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). 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 Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b)(1)

¹ 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 that those records contain substantially different types of information than that submitted to this office.

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 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.*, Open Records Decision Nos. 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 at issue pertains to the department's internal policies and procedures regarding vehicle and foot pursuits. You argue release would unduly interfere with law enforcement because the policies detail the decision-making process the officer must go through when determining whether to chase a suspected criminal. You explain that, if released, "criminals would know when law enforcement would pursue fleeing suspects and when law enforcement would not[.]" which would encourage suspects committing a certain class of offense to flee from law enforcement. Based on your representations and our review, we agree release of the information we have marked would interfere with law enforcement. Accordingly, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code.² However, we find you have failed to demonstrate release of the remaining information at issue would interfere with law enforcement. Thus, no portion of the remaining information may be withheld under section 552.108(b)(1).

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108(a)(1) is generally not applicable to information that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d 320; *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. —El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). The department does not inform us the remaining information pertains to specific ongoing criminal investigations or prosecutions, nor has the department explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, we conclude the department has failed to demonstrate the applicability of section 552.108(a)(1) to the remaining information. Therefore, the department may not

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

withhold any of the remaining information under section 552.108(a)(1) 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,

A handwritten signature in cursive script that reads "Meagan Hunter". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/rm

Ref: ID# 812190

Enc. Submitted documents

c: Requestor
(w/o enclosures)