



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 14, 2020

Ms. Dyanne Hargrove
Paralegal
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2020-10859

Dear Ms. Dyanne Hargrove:

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# 822764 (Ref. No. 20-567).

The City of Cedar Park (the "city") received a request for the city police department's (the "department") policy manual. You state you will release 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, we note the submitted information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2018-06082 (2018) and 2018-13862 (2018). In Open Records Letter No. 2018-06082, we determined 1) the department must withhold the indicated information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code, 2) the department may withhold certain information under section 552.108(a)(1) of the Government Code, 3) the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy, and 4) the department must release the remaining information. In Open Records Letter No. 2018-13682, we determined 1) to the extent the requested information is identical to the information previously requested and ruled upon by this office, the city must continue to rely on Open Records Letter No. 2018-06082 and withhold or release the identical information in accordance with that ruling, 2) the city may withhold the marked information under section 552.108(b)(1) of the Government Code, and 3) the department must release the remaining information. We note the Act does not permit the selective disclosure of information. Section 552.007 provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See Gov't Code* § 552.007;

Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold the information that was previously released unless its release is expressly prohibited by law or the information is confidential by law. The city now claims section 552.108 for the information at issue. This exception does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Thus, to the extent the submitted information was previously released in response to the prior requests, the city may not now withhold the information under section 552.108 of the Government Code. Further, with regard to the submitted information that was not previously released, we have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the city must rely on Open Records Letter Nos. 2018-06082 and 2018-13862 as previous determination and withhold or release the identical information in accordance with those rulings. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). With respect to the information that was not at issue in the previous ruling, we will consider the city's argument under section 552.108 of the Government Code.

Section 552.108(b)(1) of the Government Code 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) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). 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 (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.*, 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 you have marked, if released, would interfere with law enforcement or prosecution of crime. You state the release of the information at issue would place individuals at an advantage in confrontations with police officers, jeopardize officer safety, and hinder police investigations. Based on your representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated the release of 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(b)(1) of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the city must rely on Open Records Letter Nos. 2018-06082 and 2018-13862 as previous determinations and withhold or release the identical information in accordance with those rulings. The city may withhold the information we have 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/rm

Ref: ID# 822764

Enc. Submitted documents

c: Requestor
(w/o enclosures)