



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 19, 2020

Ms. Allison A. Bastian-Rodriguez
Counsel for the City of Harlingen
Denton, Navarro, Rocha, Bernal, & Zech, P.C.
701 East Harrison Street, Suite 100
Harlingen, Texas 78550-9165

OR2020-29004

Dear Ms. Bastian-Rodriguez:

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# 853551.

The City of Harlingen (the "city"), which you represent, received a request for the city police department's use of force policy. 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.

We note some of the submitted information may have been the subject of previous requests for rulings, as a result of which this office issued Open Records Letter Nos. 2010-03365 (2010), 2011-08531 (2011), and 2019-08926 (2019). In those decisions, in relevant part, we ruled that the city may withhold the information we marked under section 552.108(b)(1) of the Government Code and must release the remaining information. We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, to the extent the submitted information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter Nos. 2010-03365, 2011-08531, and 2019-08926 as previous determinations and withhold or release the information at issue 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the submitted

information is not encompassed by the previous rulings, we will consider your argument for the submitted information.

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. 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.*, 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 state the submitted information, if released, would interfere with law enforcement or prosecution of crime. You state the release of the information at issue would provide insight into police procedures and enable potential criminals "to foresee police officers' strategies, methods, and equipment or weapon use in preventing and fighting crime and so circumvent them," resulting in endangerment to both police officers and the public. 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. However, we find you failed to demonstrate 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 submitted information is identical to the information previously requested and ruled upon the city must continue to rely on Open Records Letter Nos. 2010-03365, 2011-08531, and 2019-08926 as previous determinations and withhold or release the information at issue in accordance with those rulings. 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/mo

Ref: ID# 853551

Enc. Submitted documents

c: Requestor
(w/o enclosures)