



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2020

Ms. Lori J. Robinson
Counsel for the City of Lakeway
Bickerstaff, Heath, Delgado & Acosta, L.L.P.
3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2020-30586

Dear Ms. Robinson:

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# 856115.

The City of Lakeway (the "city"), which you represent, received a request for information related to training of city police officers during specified years. You state you will release some information to the requestor. You state the city does not have information responsive to a portion of the request.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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.

(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, 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 Exhibit C includes firearm serial numbers that, if released, would interfere with law enforcement or prosecution of crime. You argue this information could be used on illegal firearms or in a false missing weapons report. Based on these representations and our review, we agree the release of the information at issue would interfere with law enforcement. Accordingly, the city may withhold the firearm serial numbers you have marked within Exhibit C under section 552.108(b)(1) of the Government Code.

Section 552.122 of the Government Code excepts from disclosure “[a] test item developed by a . . . governmental body[.]” Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined the term “test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.” ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* at 7. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *See* Open Records Decision No. 118 (1976). *See generally* ORD 626 at 4-5. Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987).

You seek to withhold Exhibit B under section 552.122. You state this information consists of multiple choice questions and correct answers used to test the knowledge of potential city police officers. You also state the city may reuse these test items for future officer tests. Based on these representations and our review, we find the information at issue qualifies as test items under section 552.122(b) of the Government Code. We also find the release of the answers to these questions would tend to reveal the questions themselves. Accordingly, the city may withhold Exhibit B under section 552.122(b) of the Government Code.

In summary, the city may withhold the firearm serial numbers you have marked within Exhibit C under section 552.108(b)(1) of the Government Code and Exhibit B under section 552.122(b) 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 856115

c: Requestor