



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2022

Ms. Amy B. Thomas
Counsel for the City of Harker Heights
Haley Olson
100 North Ritchie Road, Suite 200
Waco, Texas 76712

OR2022-03956

Dear Ms. Thomas:

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# 930233.

The City of Harker Heights (the "city"), which you represent, received a request for three categories of information, including a copy of the city police department's policy manual. You also 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.

Initially, you state some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2021-31509 (2021). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the city may continue to rely on Open Records Letter No. 2021-31509 as a previous determination and withhold the information at issue in accordance with that ruling.¹ See Open Records Decision No. 673 at 6-7 (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). We will address your arguments against disclosure of the information not subject to the previous ruling.

¹ As we are able to make this determination, we need not address your remaining arguments against disclosure of the submitted information.

Section 552.108(b) of the Government Code excepts from disclosure “[a]n 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 . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You state that release of the remaining information would interfere with law enforcement and crime prevention. You state disclosure of some of the information could “provide criminals and arrestees critical information which they could use to avoid or interfere with the arrest process.” Further that disclosure would “endanger officer safety and the public by providing would-be criminals critical information to avoid or interfere with police operations.” Based on these representations, and our review, we find the release of some of the submitted information would interfere with law enforcement. Therefore, the city may withhold this information, which we have marked, under section 552.108(b)(1) of the Government Code. However, we conclude the city has not established the release of the remaining information would interfere with law enforcement. Therefore, the city may not withhold any of the remaining information under section 552.108(b)(1). The city must release the remaining information.

In summary, the city may continue to rely on Open Records Letter No. 2021-31509 as a previous determination and withhold the information at issue in accordance with that ruling. 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,

Sarah E. Reese
Attorney
Open Records Division

SER/mo

Ref: ID# 930233

Enc. Submitted documents

c: Requestor
(w/o enclosures)