



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2013

Mr. Erik Brown
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2013-01087

Dear Mr. Brown:

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# 476471.

The Texas Department of Criminal Justice (the "department") received a request for a copy of the Safe Prisons Plan and the Safe Prisons Operations Manual (the "operations manual"). You state you will release a copy of the Safe Prisons Plan to the requestor. You assert the department is not required to comply with this request pursuant to section 552.028 of the Government Code. In the alternative, you claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" means:

- (1) a secure correctional facility, as defined by Section 1.07, Penal Code;
- (2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and
- (3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Gov't Code § 552.028. You state the requestor is the mother of an incarcerated individual. However, the requestor does not indicate she is acting as her son's agent, and you have not established the requestor is, in fact, acting as the incarcerated individual's agent. We therefore conclude section 552.028 of the Government Code does not permit the department to decline to comply with this request. Accordingly, we will address your argument against disclosure under the Act.

Section 552.108(b)(1) 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 . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]"¹ *Id.* § 552.108(b)(1). 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." *City of Fort 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) (construing statutory predecessor). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation

¹Although you raise subsection 552.108(a)(1) of the Government Code, based on your arguments, we understand you to raise subsection 552.108(b)(1) of the Government Code.

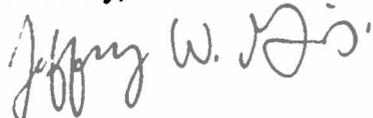
or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). 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 the operations manual “details procedures [the department] uses to detect and investigate sexual assaults, other assaultive crimes, and extortion in [department] facilities.” You explain “the [operations manual] reveals with specificity the way the [department] assesses risks, responds to emergency situations, investigates allegations of sexual assault and associated threats, and manages the incarceration of victims, potential victims, and perpetrators of sexual assault.” You assert the release of the operations manual would allow offenders to “circumvent the enforcement of law [and department] policy[.]” Based on your representations and our review, we conclude the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate how release of the remaining information would interfere with law enforcement and crime prevention, and the department may not withhold any of the remaining information on this basis. As you raise no further exceptions to disclosure, the remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 476471

Enc. Submitted documents

c: Requestor
(w/o enclosures)