



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2013

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2013-01617

Dear Ms. Messer:

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# 477168.

The City of Abilene (the "city") received a request for the standard operating procedures manual of the city police department (the "department"). You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note some of the requested information was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2012-19093 (2012). In that ruling, we concluded the department's procedures for investigating persons suspected of driving while intoxicated may not be withheld under section 552.108(b)(1) of the Government Code and must be released. As there is no indication of any change in the law, facts, and circumstances on which the previous ruling is based, we conclude the submitted information at issue in Open Records Letter No. 2012-19093 must be released in accordance with the previous ruling.¹ See Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

¹As we are able to make this determination, we need not address your claim under section 552.108 of the Government Code for the information in question.

Next, we address your claim under section 552.108 of the Government Code for the rest of the submitted information. Section 552.108(b)(1) 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[.]” Gov’t Code § 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 Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). A governmental body claiming section 552.108(b)(1) must explain how and why release of the information at issue would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques, but was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution); *but see* 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 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You contend “[r]elease of the [remaining] requested [information] . . . would disclose to the general public the procedural guidelines [department] officers are trained to follow when encountering potentially dangerous situations.” Having considered your arguments and reviewed the remaining information at issue, we conclude the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. We find you have not specifically or otherwise sufficiently demonstrated that the release of any of the remaining information at issue would interfere with law enforcement or crime prevention. We therefore conclude the remaining information may not be withheld under section 552.108(b)(1) of the Government Code and must be released.

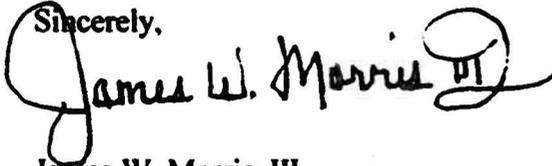
In summary, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The city must release the rest of the submitted information, including the information at issue in Open Records Letter No. 2012-19093.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 477168

Enc: Submitted information

c: Requestor
(w/o enclosures)