



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2013

Ms. Patricia Fleming
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2013-02846

Dear Ms. Fleming:

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# 479228.

The Texas Department of Criminal Justice (the "department") received a request for the most recent visitation plan or revisions to that plan since May 2008, security memorandum 02.01, and security memorandum 03.05. You state some information has or will be made available to the requestor. 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.

Initially, we note security memorandum 02.01 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-17004 (2011). In that ruling, we held the department may withhold portions of the requested information under section 552.108(b)(1) of the Government Code, but must release the remaining information. As we have no indication the law, facts, or circumstances upon which the prior ruling was based have changed, we conclude the department must continue to rely on Open Records Letter No. 2011-17004 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Letter 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 that information is or is not excepted from disclosure). We will address your arguments under section 552.108 of the Government Code for the information not subject to Open Records Letter No. 2011-17004.

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[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *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). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, 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).

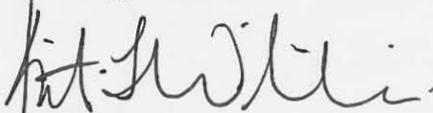
You state the submitted security memorandum 03.05 outlines the procedures and techniques used to detect contraband and dangerous prohibited items. You further state release of this information “could be useful to inmates in their future attempts to circumvent the security of the prison unit” and “would allow an offender to formulate his or her strategy for bringing in contraband to encounter the least possible amount of resistance.” Based on your representations and our review, we have marked information the department may withhold under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated that release of any of the remaining information would interfere with law enforcement or crime prevention. Therefore, the department may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code. As you raise no further exceptions, the remaining information must be released.

In summary, the department must continue to rely on Open Records Letter No. 2011-17004 as a previous determination and withhold or release the information in security memorandum 02.01 in accordance with that ruling. The department may withhold the information we have marked in security memorandum 03.05 under section 552.108(b)(1) of the Government Code. 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 479228

Enc. Submitted documents

c: Requestor
(w/o enclosures)