



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2014

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-03136

Dear Mr. Ortiz:

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# 516179 (El Paso reference no. 13-1026-3887).

The El Paso Police Department (the "department") received a request for: (1) the number of vehicles in the department's fleet and the number of vehicles equipped with dashboard cameras; (2) the cost of the cameras in use; (3) the name of the brand or supplier of the cameras in use; (4) the department policy governing use of the cameras, including the "triggers" that activate the recording by the camera; and (5) the current number of sworn officers in the department. You state the department will release information responsive to items one, two, three, and five of the request. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 information is an internal record or notation of the department that is maintained for internal use in matters relating to law enforcement. Upon review, we find the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code.¹ However, we find the department has not demonstrated release of any of the remaining information would interfere with law enforcement or crime prevention. We therefore conclude the department may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

You raise section 552.108(a)(1) of the Government Code for the remaining information. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You generally assert the submitted information deals with the detection, investigation, or prosecution of crime. However, you do not provide any arguments explaining how release of the information at issue would interfere with any specific criminal investigations being conducted by the department or how release would otherwise interfere with the law enforcement interests of the department. We therefore conclude the department may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information made confidential by other

¹As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

statutes. Section 552.101 encompasses section 418.176 of the Government Code. This section was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.176 provides, in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

...

(2) relates to a tactical plan of [an emergency response] provider[.]

Id. § 418.176(a)(2). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under section 418.176. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

We note that section 418.176(a)(2) is applicable only to information relating to a tactical plan of an emergency response provider. *See id.* § 418.176(a)(1)-(3). The remaining information consists of administrative and general law enforcement policies and procedures. You have not provided any arguments demonstrating any remaining portion of the information at issue relates to a "tactical plan" for the purposes of section 418.176. We therefore conclude the department may not withhold any of the remaining information under section 552.101 in conjunction with section 418.176 of the Government Code.

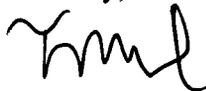
In summary, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open_orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 516179

Enc. Submitted documents

c: Requestor
(w/o enclosures)