



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 8, 2014

Mr. Clark T. Askins  
Assistant City Attorney for the City of La Porte  
Askins & Askins P.C.  
P.O. Box 1218  
La Porte, Texas 77572-1218

OR2014-15783

Dear Mr. Askins:

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# 535523.

The City of La Porte (the "city"), which you represent, received a request for a "letter or e-mail to city workers stating they are required to have police protection when working on [the requestor's] street." You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we must address the requestor's contention the city has previously released the responsive information to the public. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless

public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, we note section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. The requestor states the city released information about the responsive letter to the requestor's neighbors, retired city employees, and the city's workers and staff. However, we have no indication the submitted letter was previously released to any members of the public. Accordingly, we find section 552.007 is inapplicable to the information at issue.

Additionally, the requestor contends the city failed to comply with the requirements of the Act in requesting this decision. The requestor states his attorney verbally requested the information at issue on an unspecified date prior to the date the requestor submitted his written request for the information. Section 552.301 of the Government Code states, in relevant part,

(a) A governmental body that receives a *written request* for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

*See* Gov't Code § 552.301(a), (b) (emphasis added). The duty to request a decision from this office as to whether information may properly be withheld under the Act does not arise until the governmental body receives a written request for the information. Gov't Code § 552.301(a). Consequently, the requestor's attorney's verbal request for the information at issue did not trigger the requirements of section 552.301 of the Government Code. The city states, and submits documentation showing, it received the requestor's written request on June 17, 2014. We also note the requestor acknowledges he first submitted a written request for the information at issue on June 17, 2014. Thus, the city's ten business-day deadline to request a ruling was July 1, 2014. The city requested a ruling from this office by mail on June 30, 2014. Therefore, we consider the city to have timely submitted its request for this decision. Therefore, we conclude the city complied with the requirements of section 552.301 of the Government Code and we will address the city's arguments against disclosure of the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. *Id.* § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. 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." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation 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).

You state the submitted information constitutes an internal record or notation of a law enforcement agency that is maintained for internal use in matters of law enforcement. You argue release of this information would reveal specific law enforcement methods, techniques, and strategies. You further argue release of this information could compromise the safety of city personnel. Based on your representations and our review, we agree the release of the information at issue would interfere with law enforcement. Accordingly, the city may withhold the submitted responsive information under section 552.108(b)(1) of the Government Code.<sup>1</sup>

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.

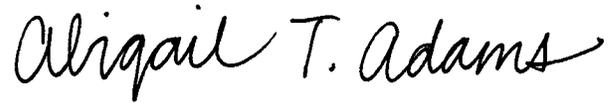
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/ac

Ref: ID# 535523

Enc. Submitted documents

c: Requestor  
(w/o enclosures)