



February 25, 2015

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2015-03727

Dear Mr. Dempsey:

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# 554714 (GCA 14-0971).

The City of Garland (the "city") received a request for a copy of the police department's policy manual. You state you have released some information. You claim some of 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the city did not comply with the procedural requirements of the Act. The requestor asserts he was not timely notified of the city's request for a ruling from this office as required by section 552.301(d) of the Government Code. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. *Id.* § 552.302. We note the city received the request for information after business hours on November 28, 2014. We

further note the city was closed on November 28, 2014. This office does not count the date the request was received or the date the governmental body was closed as business days for the purpose of calculating a governmental body's deadlines under the Act. Thus, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was December 15, 2014. We note the envelope in which the city sent its request for a ruling was postmarked December 15, 2014. The request for a ruling indicates the requestor was copied on the correspondence. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city complied with the procedural requirements mandated by subsection 552.301(d) of the Government Code. The requestor also asserts the city failed to comply with section 552.221(d) of the Government Code. *See id.* § 552.221(d) (providing that if officer of public information cannot produce information for inspection or duplication within 10 business days after date information is requested, the officer shall certify that fact in writing to requestor and set date and hour within reasonable time when information will be available for inspection or duplication). We note that while section 552.302 provides failure to comply with section 552.301 results in the presumption that the requested information is subject to required public disclosure and must be released, the Act contains no comparable provision for a violation of section 552.221(d). *See id.* § 552.302. Thus, even if the city failed to comply with section 552.221(d), as the requestor alleges, the city has not waived its discretionary exception. Accordingly, we will consider the city's arguments against disclosure of 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 release of the information you have marked would interfere with law enforcement and crime prevention. You further state the submitted information relates to responding to calls, pursuing and apprehending suspects, prisoner transport, interviewing

suspects, interaction with informants, building operations, weapons, staffing, alarm responses, intelligence gathering and surveillance of the police department. You explain that the release of this information could assist a person planning a crime in successfully carrying it out, or assist a person who has committed a crime in avoiding detection or prosecution. Based on your arguments and our review, we agree release of some of the information, which we have marked, would interfere with law enforcement. Accordingly, the department may withhold the information we have marked 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 you have marked would interfere with law enforcement or crime prevention. Therefore, the city may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code. 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.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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 554714

Enc. Submitted documents

c: Requestor
(w/o enclosures)