



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2015

Ms. L. Carolyn Nivens
Counsel for the City of League City
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2015-04243

Dear Ms. Nivens:

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# 555365 (League City Reference No. 14-609; RB File No. 3607-1/E).

The City of League City (the "city"), which you represent, received a request for six categories of information pertaining to equipment provided by the United States Department of Defense and the Texas 1033 Surplus Property Program. You state the city will withhold bank account and routing numbers under section 552.136(c) of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert the username you have marked is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined certain computer information, such

¹You state you will redact some information pursuant to Open Records Decision No. 684 (2009). However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may redact information subject to section 552.136(b) only in accordance with section 552.136, not Open Records Decision No. 684.

²We note that although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform us the information you have marked is used for accessing a website. Upon review of the information at issue, we find the username you have marked is used solely as a tool to maintain, manipulate, or protect public property and has no other significance. *Id.* Therefore, the username you have marked is not subject to the Act, and the city need not release it in response to this request.

Next, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-20875A (2014). In that ruling, we concluded the city must withhold certain marked information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code and may withhold the remaining information at issue under section 552.108(b)(1) of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on Open Records Letter No. 2014-20875A as a previous determination and withhold the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (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 now address your arguments against disclosure of the information that is not subject to Open Records Letter No. 2014-20875A.

We will next address your argument under section 552.108(b)(1) of the Government Code, as this exception is potentially the most encompassing. 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 Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that subsection 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that section 552.108(b) 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 contend the information you have marked, if released, would interfere with law enforcement or prosecution of crime. You state the information at issue contains descriptions and serial and model numbers for intelligence and information-sharing equipment, monitoring devices, response personal protective equipment, and vehicles used by the city's police department's Combined Agency Response Team and Special Weapons and Tactics Team. You argue release of the information at issue could give citizens the ability to research and identify pieces of equipment and anticipate weaknesses in the city's police department. Based on your representations and our review, we agree the release of most of the information you have marked would interfere with law enforcement. However, we find you have not established release of the remaining information, which we have marked for release, would interfere with law enforcement. Accordingly, except for the information we have marked for release, the city may withhold the information you have marked under section 552.108(b)(1) of the Government Code.³

You claim the remaining information you have marked is excepted from disclosure under section 552.108(a)(1) of the Government Code. 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(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *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 remaining information you have marked is excepted under section 552.108(a)(1). However, you do not inform us any of the information at issue pertains to any specific ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of a specific crime. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1). Therefore, the city may not withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the

³As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. Upon review, we find you have failed to demonstrate release of any of the remaining information would subject any city employee to a substantial threat of physical harm. Accordingly, the city may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the username you have marked is not subject to the Act, and the city need not release it in response to this request. The city must continue to rely on Open Records Letter No. 2014-20875A as a previous determination and withhold the previously ruled upon information in accordance with that ruling. Except for the information we have marked for release, the city may withhold the information you 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 555365

Enc. Submitted documents

c: Requestor
(w/o enclosures)