



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2015

Mr. Grant Jordan
Assistant City Attorney
City of Fort Worth
Office of the City Attorney
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2015-04722

Dear Mr. Jordan:

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# 560912 (COFW PIR No. W040169).

The Fort Worth Police Department (the "department") received a request for information related to two named corporations. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You indicate release of the submitted information may implicate the interests of the Federal Bureau of Investigation (the "FBI"). Accordingly, you provide documentation showing you have notified the FBI of its right to submit comments to this office explaining why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the FBI. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state a portion of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-00174 (2015). In that ruling, we determined, in part, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code and may withhold the information we indicated under section 552.108(b)(1) of the Government Code. You state there has been no

change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department may rely on Open Records Letter No. 2015-00174 as a previous determination and withhold the identical information 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 consider the submitted arguments against disclosure for the submitted information, which is not encompassed by the previous ruling.

Section 552.108(b) 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 (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section 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.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You state the submitted information reveals specialized law enforcement investigation and communications equipment that would divulge the intricate internal workings of the department’s methods, techniques, and strategies for preventing and detecting crime. You assert release of the information “would permit private citizens with criminal intentions to

anticipate weaknesses in [the] department, avoid detection, jeopardize officer safety, and generally undermine police efforts[.]” Thus, you claim release of this information would hinder law enforcement and put the public at risk. Upon review, we find the release of this information would interfere with law enforcement. Therefore, the department may withhold the submitted information under section 552.108(b)(1) of the Government Code.¹

In summary, the department may rely on Open Records Letter No. 2015-00174 as a previous determination and withhold the identical information in accordance with that ruling. The department may withhold the submitted information under section 552.108(b)(1) of the Government Code.

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 560912

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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