



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2015

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2015-08780

Dear Ms. Pemberton:

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# 562457 (Killeen ID No. W015523).

The Killeen Police Department (the "department") received a request for any documents relating to department or City of Killeen (the "city") laws, ordinances, regulations, policies, procedures, and/or customs relating to a police officer discharging a firearm at a vehicle or in the course of a pursuit. You claim 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.

Initially, you have indicated some of the submitted information is not responsive to the instant request because it does not relate to department or city laws, ordinances, regulations, policies, procedures, and/or customs relating to a police officer discharging a firearm at a vehicle or in the course of a pursuit. Upon review, we agree a portion of the information you indicated, which we have marked, is not responsive. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request. However, the remaining information you have indicated is not responsive pertains to department or city laws, ordinances, regulations, policies, procedures, and/or customs relating to a police officer discharging a firearm at a vehicle or in the course of a pursuit. Thus, we find this

information is responsive to the instant request. Accordingly, we will consider whether or not this information may be withheld under the Act.

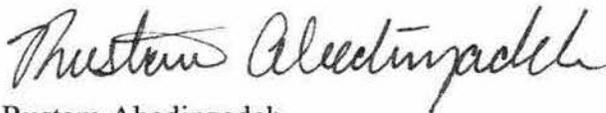
Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if (1) release of the internal record or notation would interfere 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 assert revealing the responsive information would generally allow the public to anticipate weaknesses that could be used against officers employed by the department. Based on your argument and our review of the information at issue, we agree that release of the information 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 the you have failed to demonstrate how the remaining responsive information would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold the remaining responsive information under section 552.108(b)(1) of the Government Code. As no other exceptions to disclosure have been raised, the department must release the remaining responsive information.

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 562457

Enc. Submitted documents

c: Requestor
(w/o enclosures)