



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2015

Ms. Evelyn Kimeu
Staff Attorney
Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2015-08982

Dear Ms. Kimeu:

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# 564344 (ORU# 15-1245).

The Houston Police Department (the "department") received a request for information pertaining to the department's policies and procedures regarding the collection and processing of evidence in criminal cases and the discovery of new evidence in closed cases in use or effect from January 1, 1990, to the date of the request. You state the department will release some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We note some of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-09225 (2011). In Open Records Letter No. 2011-09225, we determined the department may

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

withhold some of the information at issue under section 552.108(b)(1) of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously submitted and ruled on by this office, we conclude the department may continue to rely on Open Records Letter No. 2011-09225 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). To the extent the submitted information is not subject to Open Records Letter No. 2011-09225, we will address your arguments against disclosure of the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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 information at issue 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, 710 (Tex. 1977). You state Exhibit 2 relates to a criminal investigation that is inactive pending additional leads. Thus, you indicate the department objects to disclosure of the information at issue because its release would interfere with a continuing criminal investigation. Based on this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold Exhibit 2 under section 552.108(a)(1) of the Government Code.

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 information you have marked under section 552.108(b)(1) “consists of training materials related to the collection and processing of crime scenes.” You further state the information “reveals the specifics on how to process a crime scene for purposes of conducting a criminal investigation” and release of this information would “provide criminal elements with information that could be used to hinder an investigation or allow them to evade arrest by tampering with a crime scene.” Upon review, however, we find you have not demonstrated how release of the information at issue would interfere with law enforcement or crime prevention. Therefore, the department may not withhold any of the submitted information under section 552.108(b)(1) of the Government Code.

Section 552.122(b) of the Government Code excepts from disclosure a test item developed by a licensing agency or governmental body. Gov’t Code § 552.122(b). The term “test item” in section 552.122 includes any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee’s overall job performance or suitability. Open Records Decision No. 626 at 9 (1994). Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *See id.* at 6. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8. You assert Exhibit 3 consists of questions that test the knowledge and abilities of employees in a particular area. Upon review, we conclude Exhibit 3 consists of test items under section 552.122(b). Therefore, the department may withhold Exhibit 3 under section 552.122(b).

In summary, to the extent the requested information is identical to the information previously submitted and ruled on by this office in Open Records Letter No. 2011-09225, the department may withhold the identical information in accordance with that ruling. The department may withhold Exhibit 2 under section 552.108(a)(1) of the Government Code. The department may withhold Exhibit 3 under section 552.122(b) 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 564344

Enc. Submitted documents

c: Requestor
(w/o enclosures)