



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2015

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-09356

Dear Ms. Cost:

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# 563476 (DPS PIR Nos. 15-0867 and 15-0887).

The Texas Department of Public Safety (the "department") received two requests from different requestors for a copy of a specified report. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

Initially, the department states it previously provided the submitted information to members of the legislature pursuant to section 552.008 of the Government Code. Section 552.008(b) provides, in part, as follows:

[A] governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with [the Act] if the requesting member, agency, or committee states that the public information is requested under [the Act] for legislative purposes.

Gov't Code § 552.008(b). We note that disclosure of excepted or confidential information under section 552.008 does not waive or affect the confidentiality of the information or the right to assert exceptions in the future regarding that information, and section 552.008 provides specific procedures relating to the confidential treatment of the information. *Id.* Furthermore, the department states it released the submitted information to the governor's office pursuant to the intergovernmental transfer doctrine. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). Accordingly, we will address the department's arguments against disclosure of the submitted information.

Section 552.108(b) 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), 456 (198) (information regarding location of off-duty police officers), 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).

The department states the submitted information discusses ongoing operations by the department and other law enforcement agencies at the Texas border to detect, prevent, and respond to criminal activities. The department explains the information at issue details

staffing and equipment utilized for these operations and strategies employed in these operations. The department states revealing the information at issue would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning the efforts of law enforcement to detect and prevent criminal activity on the border. Upon review, we find the department has demonstrated release of the information would interfere with law enforcement. Thus, the department may withhold the submitted information under section 552.108(b)(1) of the Government Code.¹

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 563476

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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