



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 2, 2015

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

OR2015-13437

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# 570639 (Houston Police Department ORU No. 15-2438).

The Houston Police Department (the "department") received a request for the use of force policy for the department, the guidelines for execution of the policy, and any training material regarding use of force used by the department. 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 information.

Initially, you inform us some 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. 2005-09644 (2005). In Open Records Letter No. 2005-09644, we concluded the department may withhold certain information under section 552.108(b)(1) of the Government Code but must release the remaining information at issue. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2005-09644 as a previous determination and withhold or release 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 information is or is not excepted from disclosure). We will address the department's arguments against release of the submitted information that is not encompassed by Open Records Letter No. 2005-09644.

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 argue release of portions of Exhibit 2 would interfere with law enforcement and jeopardize officer safety. You explain release of some of the information “would allow [those being investigated] to circumvent the criminal investigation process, which would adversely impact the [d]epartment’s ability to investigate and support the prosecution of criminal activity.” Based on your representations and our review, we agree release of some of the information at issue would interfere with law enforcement. Therefore the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate how the release of the remaining information at issue in Exhibit 2 would interfere with law enforcement and crime

prevention. Accordingly, the department may not withhold any of the remaining information in Exhibit 2 under section 552.108(b)(1).

Section 552.122 of the Government Code exempts from public disclosure “[a] test item developed by a . . . governmental body[.]” Gov’t Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined 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. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* 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 seek to withhold Exhibit 3 under section 552.122. You state the submitted test questions contained in Exhibit 3 are designed to evaluate and measure applicant’s specific objective knowledge of use of force policies. You inform us the applicant’s answers to these questions determine an officer’s suitability as a police officer with the department. You state the department uses the same or similar questions in all of its training on use of force policies, and the release of the questions, as well as the answers, would compromise future testing. Having considered your arguments and reviewed the information at issue, we find the submitted questions in Exhibit 3 qualify as test items under section 552.122(b) of the Government Code. We also find the release of the answers to these questions would tend to reveal the questions themselves. Therefore, the department may withhold Exhibit 3 under section 552.122(b) of the Government Code.

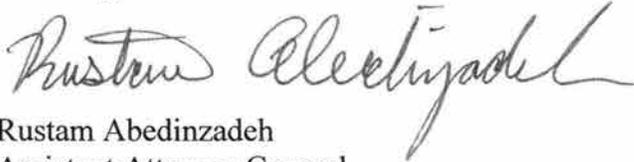
In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2005-09644 as a previous determination and withhold or release the identical information in accordance with that ruling. The department may withhold the information we have marked in Exhibit 2 under section 552.108(b)(1) of the Government Code. The department may withhold Exhibit 3 under section 552.122(b) of the Government Code. The department must release the remaining 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,

A handwritten signature in cursive script, reading "Rustam Abedinzadeh". The signature is written in black ink and is positioned above the typed name.

Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 570639

Enc. Submitted documents

c: Requestor
(w/o enclosures)