



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2015

Ms. Tracie Reilly
Assistant City Attorney
Public Safety Legal Advisor
City of Amarillo
200 Southeast Third Avenue
Amarillo, Texas 79109

OR2015-13783

Dear Ms. Reilly:

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# 570432 (Amarillo Request No. 15-389).

The Amarillo Police Department (the "department") received a request for the department detective operations manual, operations manual, forms, rules and regulations, and any outside police writing aids.¹ You state you do not have information responsive to a portion of the request.² You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.108

¹We note the department sought and received clarification of this request from the requestor. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). We also note the department sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the department received the required deposit on April 15, 2015. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

of the Government Code.³ We have considered the exception you claim and reviewed the submitted information.

Initially, we note a portion of the requested information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-05124 (2015) and 2015-00877 (2015). In Open Records Letter No. 2015-05124, we determined the department may withhold the information we marked under section 552.108(b)(1) of the Government Code and must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law. In Open Records Letter No. 2015-00877, we determined the department must release the responsive information. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter Nos. 2015-05124 and 2015-00877 as previous determinations and withhold or release the identical information in accordance with those rulings. *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). To the extent the submitted information is not identical to the information at issue in Open Records Letter Nos. 2015-05124 and 2015-00877, we will address your arguments against its disclosure.

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

³Although you raise section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

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 explains revealing the records it has marked under section 552.108(b)(1) would “allow citizens to anticipate weaknesses and avoid detection and would specifically present a danger to officers acting in the field.” Upon review, we find the department has demonstrated 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, the department has failed to demonstrate the remaining information at issue would interfere with law enforcement. Accordingly, the department may not withhold any of the remaining 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 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 570432

Enc. Submitted documents

c: Requestor
(w/o enclosures)