



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2015

Mr. Daniel Ortiz
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2015-21417

Dear Mr. Ortiz:

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# 580975.

The El Paso Police Department (the "department") received a request for the department's handbook or procedure manual, including policies and procedures for police officers investigating automobile accidents with injuries. You state you released some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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

¹Although you also raise section 552.101 of the Government Code in conjunction with common-law and constitutional privacy, you have provided no arguments explaining how section 552.101 is applicable to the submitted information. Therefore, we assume you no longer assert section 552.101. See Gov't Code §§ 552.301(e)(1)(A), .302.

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 state the submitted information relates to information on “crime prevention techniques and law enforcement procedures that are unknown to the general public.” You assert the release of this information “would enable the public, particularly criminals, to disrupt police [operations], to take advantage of police restrictions, and to anticipate and thwart police responses,” thereby “endanger[ing] the lives and safety of police officers and . . . the public in general.” Upon review, we find release of some of the submitted information would interfere with law enforcement. Therefore, the department may withhold this information, which we have marked, under section 552.108(b)(1) of the Government Code. However, we conclude the department has not established the release of the remaining information would interfere with law enforcement. Therefore, the department may not withhold any of the remaining information under section 552.108(b)(1). The remaining information must be released.²

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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 that reads "Cole Hutchison".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/som

Ref: ID# 580975

Enc. Submitted documents

c: Requestor
(w/o enclosures)