



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2015

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

OR2015-22147

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# 584005 (DPS PIR No. 15-3980).

The Texas Department of Public Safety (the "department") received a request for copies of all reports prepared by the department and sent to any member of the Texas Legislature in specified years.¹ You state you will release some information. You claim 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 you claim and reviewed the submitted information.

Initially, you state 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. 2015-09356 (2015). In that ruling, we determined the department may withhold the submitted information under section 552.108(b)(1) of the Government Code. You state the law, facts,

¹You indicate the department sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

or circumstances on which the prior ruling was based have not changed. Thus, in regard to the requested information at issue, the department may continue to rely on Open Records Letter No. 2015-09356 as a previous determination and withhold that 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the information you have submitted was not at issue in the previous ruling. Accordingly, we will address the public availability of this information.

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 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 Office of the Governor pursuant to the intergovernmental transfer doctrine. This office has concluded 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)(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 320, 327 (Tex. App.—Austin 2002, no pet.) (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 submitted information details “ongoing operations by the [d]epartment and other law enforcement agencies, especially at the Texas border, to detect, prevent, and respond to terroristic threats and other criminal activities.” You assert release of the information at issue “would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning the law enforcement efforts in Texas, allowing these groups to identify vulnerabilities and avoid detection.” Upon review, we find the department has demonstrated release of the submitted information would interfere with law enforcement. Thus, the department may withhold the submitted information under section 552.108(b)(1) of the Government Code.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.

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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 584005

Enc. Submitted documents

c: Requestor
(w/o enclosures)