



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 17, 2015

Ms. Judy Hickman
Assistant Supervisor
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704

OR2015-26605

Dear Ms. Hickman:

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# 591103.

The Beaumont Police Department (the "department") received a request for (1) information pertaining to cases assigned to a named officer during a specified period of time; (2) time off sheets, notices of retirement, and other information for all police officers during a specified period of time; and (3) specified communications between the department and the city's legal department during a specified period of time. You state you are releasing some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.137, and 552.152 of the Government Code.¹ Additionally, you state you have notified an interested third party of his right to submit comments to this office explaining why the submitted information should not be released. See Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection,

¹Although you seek to withhold information under section 552.021 of the Government Code, we note this provision is not an exception to disclosure under the Act. See Gov't Code § 552.021 (providing public information is available during normal business hours).

investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states the information in Exhibit B relates to a pending criminal investigation. Based on the department’s representation and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code.²

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 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).

²As our ruling is dispositive, we need not address the department’s remaining arguments against disclosure of this information.

The department states the information in Exhibit C relates to officer work schedules and release of the information at issue could compromise the safety of officers and their families. Upon review, we find the department has demonstrated release of the information it has marked would interfere with law enforcement. Thus, the department may withhold Exhibit C under section 552.108(b)(1) of the Government Code.³

In summary, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code and Exhibit C under section 552.108(b)(1) of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/akg

Ref: ID# 591103

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.