



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

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Ms. Cynthia Trevino  
Counsel for the City of Copperas Cove  
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2500 William Cannon, Suite 609  
Austin, Texas 78745-5320

OR2015-26791

Dear Ms. Trevino:

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# 591389 (Ref. No. W002864-100115).

The City of Copperas Cove (the "city"), which you represent, received a request for all police department policies and directives. The city states it released some of the requested information. The city claims some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Section 552.108 of the Government Code provides, in part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). Section 552.108(b)(1) 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).

The city explains revealing the records it has marked would provide criminals with internal policies and procedures, including information concerning use of force procedures, weapons used by police officers, body armor, call priorities, the movement of prisoners, pursuit protocols, mobile video cameras, and bomb threat management. The city explains a criminal with knowledge of this information would be at an advantage in confrontations with police officers and would increase the person's chances of evading arrest or injuring an officer or other persons. Upon review, we find the city has demonstrated release of the information we have marked would interfere with law enforcement. Thus, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code.<sup>1</sup> However, the city has failed to demonstrate the remaining information it has marked would interfere with law enforcement. Thus, the city may not withhold the remaining information it has marked under section 552.108(b)(1).

A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The city does not inform us the remaining information it has marked pertains to an ongoing criminal investigation or prosecution, nor has the city explained how its release would interfere with the detection, investigation, or prosecution of crime. Thus, the city has not met its burden under section 552.108(a)(1). A governmental body claiming section 552.108(a)(2) or 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The city has not demonstrated the information at issue relates to an investigation that has concluded in a result other than conviction or deferred adjudication. Thus, the city has not met its burden under section 552.108(a)(2) or 552.108(b)(2). Section 552.108(a)(3) is also inapplicable as the information at issue does not relate to a threat against a police officer. *See Gov't Code* § 552.108(a)(3). Finally, the city does not

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<sup>1</sup>As our ruling is dispositive, we need not address the city's remaining arguments against disclosure of this information.

assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the city may not withhold any of the remaining information it has marked under section 552.108. As no other exceptions to disclosure are raised for the remaining information, it must be released.

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](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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 591389

Enc. Submitted documents

c: Requestor  
(w/o enclosures)