



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 31, 2016

Ms. Allison Bastian  
Deputy City Attorney  
City of Brownsville  
1001 East Elizabeth Street, Suite 234  
Brownsville, Texas 78520

OR2016-12294

Dear Ms. Bastian:

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# 612008.

The City of Brownsville (the "city") received a request for the manual, rule book, guidelines, and policies and procedures for the city's police department (the "department"). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note 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. 2015-23240 (2015). In that ruling, we determined, the city may withhold certain information under section 552.108(b)(1) of the Government Code and must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the city may rely on Open Records Letter No. 2015-23240 as a previous determination and withhold or release the

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

identical 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by Open Records Letter No. 2015-23240, we will address your arguments against disclosure.

You generally raise section 552.101 of the Government Code for the submitted information. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, you have not pointed to any confidentiality provision, nor are we aware of any, that would make any of the submitted information confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code.

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). 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.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You contend release of the submitted information would interfere with law enforcement efforts because “a criminally-inclined member of the public could easily use [the information at issue] to circumvent police departmental safeguards, detect weaknesses, and undermine the ability of the [department] to protect the public and uphold the law.” However, upon review, we find you have not demonstrated release of any of the submitted information would interfere with law enforcement or crime prevention. Consequently, the city may not withhold any of the submitted information under section 552.108(b)(1) of the Government Code.

In summary, the city may rely on Open Records Letter No. 2015-23240 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the submitted information is not encompassed by Open Records Letter No. 2015-23240, the city must release the submitted 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](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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bw

Ref: ID# 612008

Enc. Submitted documents

c: Requestor  
(w/o enclosures)