



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Mr. Benjamin L. Stool
Counsel for the Town of Ponder
Boyle & Lowry, L.L.P.
4201 Wingren Drive, Suite 108
Irving, Texas 75062-2763

OR2016-20228

Dear Mr. Stool:

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# 625777.

The Ponder Police Department (the "department"), which you represent, received a request for information pertaining to a named individual.¹ 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 information. We have also received and considered comments from the Texas Department of Public Safety ("DPS"). *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.108(b) 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[.]" *Id.* § 552.108(b)(1). This section is intended to protect "information which, if released, would permit private citizens to

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (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).

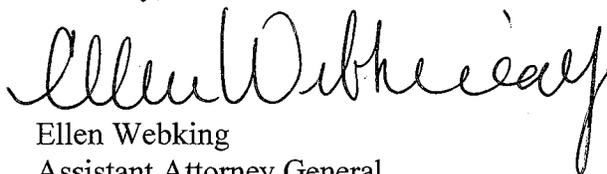
anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects 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 and DPS claim the submitted information is excepted from disclosure under section 552.108(b)(1) of the Government Code. You inform us the submitted information consists of audits and search report logs made via the Texas Law Enforcement Telecommunications System (“TLETS”) operated by DPS. You explain that the TLETS logs are created and maintained by DPS for purposes of monitoring use of the system and assuring that unauthorized individuals do not have access to confidential law enforcement information. DPS asserts that the release of the TLETS logs “could easily give a criminal sufficient warning to evade detection or prosecution.” DPS further states that “a records check might be run well before the time an individual is officially or openly identified as a suspect in a case and before the individual has even been contacted by police.” DPS contends that “an individual engaged in illegal activity who can find out whether any law enforcement agency has run checks on him can gain valuable knowledge in terms of concealing his activities from law enforcement scrutiny.” Thus, you and DPS assert that release of the requested information would interfere with law enforcement activities. Based on the submitted arguments and the submitted information that you have provided, we agree that release of the submitted information would interfere with law enforcement. We therefore conclude that the department may withhold the submitted information 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 625777

Enc. Submitted documents

c: Requestor
(w/o enclosures)