June 26, 2015

Shawn Musgrave
MuckRock News
Dept. MR 18593
P.O. Box 55819
Boston, MA 02205-5819

Re: Open Records Request received by the City of McKinney;
McKinney ID No. 15-16426

Dear Mr. Musgrave:

I represent the City of McKinney (the “City”) regarding the above-referenced matter. The City is in receipt of your request for information. The Office of the Attorney General (the “OAG”) has previously issued a decision to the City that evaluates the public availability of the information you seek.

The City has concluded that the information you have requested is subject to a previous determination pursuant to the Public Information Act (the “Act”) because (1) the City previously received a request for the same information that you have requested; (2) the City has already submitted the same information that you have requested to the OAG and received a ruling; (3) the OAG’s prior ruling concluded that precisely the same information is or is not excepted from disclosure under the Act; and (4) the law, facts, and circumstances on which the prior OAG ruling was based have not changed since the issuance of the ruling.

The OAG has already determined that a portion of the information you have requested may be withheld under Section 552.108 of the Act. See OR2013-20899. Therefore, pursuant to Open Records Letter No. 2013-20899, the City must withhold a portion of the responsive information to your request. See Tex. Att’y Gen. ORD No. 673. A copy of this previous determination is enclosed as Exhibit A. The documents the City is releasing are enclosed as Exhibit B.

Do not hesitate to contact me if you have any questions. Of course, you may also direct any questions to the staff of the Office of the Attorney General at (512) 478-OPEN (6736) or toll-free at (877) OPEN-TEX (673-6839).
Sincerely,

Lisa D. Mares

LDM/tw

cc (w/encl.): Edie Jolley, Records Manager
          Heather Moody, Police Records Supervisor
          Anna Clark, Communications & Media Relations Manager
December 3, 2013

Ms. Rachel L. Lindsay
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-20899

Dear Ms. Lindsay:

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# 507293.

The McKinney Police Department (the “department”), which you represent, received a request for the department’s policy manual. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-01545 (2013). In that ruling, we concluded the department may withhold certain marked information under section 552.108(b)(1) of the Government Code but must release the remaining information. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2013-01545 was based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the department may continue to rely on Open Records Letter No. 2013-01545 as a previous determination and withhold or release the identical information in accordance with that ruling. See Open Records Decision No. 673 (2001) (so long as law, facts, 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 the previous ruling, we will address your argument against its disclosure.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); see also Open Records Decision No. 531 at 2 (1989) (quoting Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement.

See Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); see also Ex parte Pruitt, 551 S.W.2d 706. 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.” See City of Fort Worth v. Cornell, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.).

This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. See, e.g., Open Records Decision Nos. 531 (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., 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 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the remaining information consists of internal policies and procedures governing the department. You argue release of the information at issue, including the department’s use of force policy, “may impair an officer’s ability to arrest a suspect[].” You further state “those areas of the manual that relate to training, tactics and internal controls that specifically govern the conduct and practices of the police department if released would interfere with law enforcement” and “[p]roviding information that governs the actions of the police officers would place individuals who are in a confrontation with police at an advantage over the police.” Based on your representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated how release of any of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining information under section 552.108(b)(1).
In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the department may continue to rely on Open Records Letter No. 2013-01545 as a previous determination and withhold or release the identical information in accordance with that ruling. The department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The remaining information 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, 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,

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 507293

Enc. Submitted documents

c: Requestor
    (w/o enclosures)