



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 17, 1994

Mr. Thomas L. Finlay
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR94-077

Dear Mr. Finlay:

The City of San Antonio (the "city") received a request for information concerning tests from the city police department's Handgun Selection Committee and requested a decision of this office pursuant to section 7 of the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a (now found at section 552.301 of the Texas Government Code).¹ You claimed that sections 3(a)(8) and 3(a)(11) (now found at sections 552.108 and 552.111, Government Code) except the requested information from required public disclosure. Because the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) required reexamination of the section 552.111 exception, we allowed you an additional 15 days to submit arguments in accordance with the *Gilbreath* decision. We now consider the additional arguments you have submitted for withholding the requested documents under sections 552.108 and 552.111 of the act. We have assigned your request ID# 18686.

The documents submitted to us for review reflect tests of firearms for firing, accuracy, and mechanical soundness. You advise us that the purpose of the tests was to evaluate the capabilities, shortcomings, strong points, weak points, safety, comfort, ease of use, ease of maintenance, simplicity of mechanical function, weight, and durability of various brands of firearm. You claim that this information is excepted by section 552.108, which excepts:

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

(a) A record of a law enforcement agency or prosecutor that deals with the detections, investigations, or prosecutions of crime, and

(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 and prosecution.

When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)).

In support of your contention that release of the requested information would interfere with law enforcement, you refer us to Open Records Decision No. 143 (1976), in which this office held that the descriptions of certain equipment designed for clandestine operations fell within the section 552.108 exception. We do not believe that the circumstances in that decision are analogous to those at issue here. Release of descriptions of equipment used for clandestine operations clearly undermines the clandestine value of such equipment, thereby interfering with a legitimate law enforcement interest. Release of information regarding the testing of handguns that may be selected for use by police officers does not undermine a law enforcement interest in clandestine operations. Moreover, the capabilities of a particular sidearm, e.g., its range, speed, weight, and accuracy, are freely available from the weapon's manufacturer for review and comparison. We thus do not believe that Open Records Decision No. 143 is controlling here. As you have provided us with no other information explaining how release of this information would interfere with a legitimate interest of law enforcement, and as the documents submitted to us for review do not provide an explanation on their face, we conclude that you may not withhold the requested information under section 552.108 of the Open Records Act.

You also claim that the requested information is excepted from required public disclosure by section 552.111, which excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 552.111 exception in light of the *Gilbreath* decision and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating

to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. The information submitted to us for review relates to an internal administrative matter, i.e., the purchase of equipment, and does not on its face appear to reflect the policymaking functions of the police department. We conclude that section 552.111 does not except the information from required public disclosure; it must therefore be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/jmn

Enclosures: Open Records Decision No. 615

Ref.: ID# 18686

cc: Mr. Tommy Oliver
3315 Lookout Lane
Austin, Texas 78746
(w/o enclosures)