Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 14, 1995

Ms. Elizabeth A. Lunday
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR95-1425

Dear Ms. Lunday:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31034.

The City of Mesquite (the "city") received an open records request for the following information:

1. All policy and procedures, rules and regulations pertaining to the operation and administration of the Mesquite Police Department.

2. All policy and procedures, rules and regulations pertaining to the operation and administration of the Narcotics division of the Mesquite Police Department.

You have submitted to this office for review as responsive to the request the police department's *Written Directives Manual*, a document of approximately 400 pages in length and consisting of seven separate sections entitled "Code of Conduct," "Administration;" "Operations;" "Auxiliary Service;" "Appearance, Uniform, & Equipment;" "External Relationships;" and "Miscellaneous/Other." The manual also contains three shorter sections ("Exhibits," which consists largely of blank standardized forms, a "Glossary," and an "Index") and a compilation of "Amendments" to the manual. You contend that this manual is excepted from required public disclosure in its entirety under the Open Records Act's "law enforcement" exception, section 552.108 of the Government Code.

Section 552.108 excepts from required public disclosure:

> (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution 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 . . . .

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). The primary purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture, *see* Open Records Decision Nos. 133(1976), 127 (1976), and to protect the safety of police officers. *See, e.g.*, Open Records Decision No. 531 (1989).

Whether disclosure of particular records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). You claim generally that the entire manual is excepted from public disclosure because its release:

> would unduly interfere with the detection, investigation and prevention of crime by placing in the public domain information which would enable persons desiring to violate the laws knowledge of the parameters in which they may operate before they may be investigated or detected, or in certain instances what actions they should take that would result in the termination of an investigation or pursuit. In certain instances dissemination of the information in the manual would result in a greater potential of injury to officers and/or third persons.

During a brief review of the manual, we were quickly able to identify many portions of the manual that clearly do not come under the protection of section 552.108. For example, one portion of the manual provides:

> I. A member of the Mesquite Police Department who is properly summoned to jury duty is expected to respond and serve, if selected.
>
> II. Members of the department shall notify his supervisor as soon as practical after receipt of a summons for jury duty.

> III. If such summons or jury service is on a day on which the employee is scheduled to work, the employee will be excused from duty, the daily assignment sheet will be coded "JD." The employee will be paid his regular salary in addition to any compensation paid by the summoning agency.

MESQUITE POLICE DEP'T, WRITTEN DIRECTIVES, CODE OF CONDUCT GEN. ORDERS, pt. 107.00, at 23 (1992). To contend that the release of the above quoted language and other portions of the manual would "unduly interfere with law enforcement" is clearly absurd. It is apparent to this office that you have made no effort to identify the portions of the manual that the city could safely release to the requestor without threatening effective law enforcement.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, or explain how that exception applies, the exception is ordinarily waived unless the information is deemed confidential under the act. *See* Attorney General Opinion JM-672 (1987). Furthermore, it is well established that where one of the act's exceptions is clearly not applicable to all of the information in a requested record a general claim that the exception applies to the entire record does not comport with the act's procedural requirements. *See* Open Records Decision No. 150 (1977) at 2. We therefore conclude that you have not met your burden under the Open Records Act to establish the extent to which section 552.108 applies to the manual's contents. The manual is therefore presumed to be public information and must be released to the requestor in its entirety unless you can demonstrate compelling reasons for withholding specific portions of the manual.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Loretta DeHay

Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 31034

Enclosures: Submitted documents

cc: Mr. Harlan Lowrance
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(w/o enclosures)