



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 13, 1998

Mr. Ron M. Pigott  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR98-0698

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113246.

The Texas Department of Public Safety (the "department") received a request for seven categories of information: (1) policies or procedure on vehicle searches; (2) any policy or procedure, Attorney General Opinion, Legal Staff Conclusion or Opinion used by or in the possession of the Texas DPS for the last 5 years in any way concerning, regulating, training or guiding the consensual or nonconsensual searches of vehicles or attempts to search vehicles by DPS officers or governing probable cause; (3) any record of a vehicle search performed by a DPS officer in the last two years; (4) any record of a vehicle search performed by a DPS officer in the last two years that did not result in criminal charges; (5) any records of a vehicle search performed by a DPS officer in the last two years in which no search warrant was obtained; (6) any record of a vehicle search performed by a DPS officer that has been transferred out of the DPS; and (7) any final orders in civil cases dealing with improper vehicle searches in which DPS was a party in the last ten years. You have submitted representative samples of the requested information to this office for review.<sup>1</sup> You contend that the information is excepted from disclosure under section 552.108 of the Government Code.

Initially you state that you have released documents responsive to item (1) but also state that you do not have any documents responsive to items (6) and (7). The Open Records Act applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision No. 605 (1992).

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<sup>1</sup>In reaching our conclusion here, we assume that 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, 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The Seventy-Fifth Legislature amended section 552.108 of the Government Code to read as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(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 or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

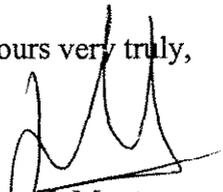
(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

The requested information relates to the department's investigation of cases which involve searches as outlined in the request. You state that many, if not all of the records of the past two years will still be involved in active investigation and/or prosecution. Furthermore, you state that release of these records would, in effect, be releasing the evidence that will be presented at any criminal trial. We therefore conclude that the department may withhold the information from disclosure pursuant to section 552.108(a)(1). On the other hand, the department may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

Relatedly, in response to item (2) you assert that the entire manual entitled "Criminal Interdiction" is an 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. We agree. You may withhold the requested item under section 552.108(b)(1).

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 regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

  
Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/glg

Ref: ID# 113246

Enclosures: Submitted documents

cc: Mr. J.D. Davis  
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(w/o enclosures)