



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 31, 1998

Mr. Joe Bridges
Assistant District Attorney
Denton County Criminal District Attorney's Office
Counsel to the Sheriff
127 North Woodrow Lane
Denton, Texas 76205

OR98-2071

Dear Mr. Bridges:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118153.

The Denton County Sheriff's Department (the "department") received three requests for the cellular telephone records of the North Central Texas Narcotics Task Force and a list of all non-undercover officers on the task force. You have released the costs and summary pages of the billing records to the requestors. You claim that the detailed cellular telephone records are excepted from disclosure under section 552.108 of the Government Code. You have not objected to the request for a list of the non-undercover officers on the task force; therefore, we assume that you have released this information to the requestor. You have submitted samples of the requested information.¹ We have considered your arguments and reviewed the sample documents.

Section 552.108 of the Government Code reads 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:

¹In 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 (1988), 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.

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

(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

(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; [or]

(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

To get the protection section 552.108, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 636 (1995). This office has previously held that section 552.108 protects from required public disclosure the cellular mobile phone numbers assigned to public and private vehicles used by county officials and employees with specific law enforcement responsibilities. Open Records Decision No. 506 (1988). We further concluded that section 552.108 may except from required public disclosure the numbers called on the cellular telephones assigned to those individuals with specific law enforcement responsibilities. ORD 636 at 3. In reaching this conclusion, Open Records Decision No. 636 states:

We conclude that a cellular telephone bill does not explain on its face how its release would unduly interfere with law enforcement and crime prevention. Therefore, to claim the section 552.108 exception for this information, a governmental body must do two things: (1) mark the information it claims would tend to identify a confidential informant or would unduly interfere with law enforcement and crime prevention if released, and (2) detail how release of that marked information would identify the informant or unduly interfere with law enforcement. Without this information, the governmental body will not have met its burden under section 552.108. A generalized explanation is insufficient; the governmental body's argument must be addressed to the particular records requested or the portions of those

particular records for which the governmental body is claiming the section 552.108 exception. Open Records Decision No. 434 (1986).²

Id. at 4 (construing predecessor statute).

You assert that a line-by-line analysis would involve hundreds of pages. We note that a governmental body may not refuse to comply with an open records request merely because it would be difficult to do so. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Instead of a “line-by-line” analysis, you have provided this office with a generalized explanation and contend that “[r]eviewing and analyzing the cellular phone records could potentially reveal” certain information that would interfere with law enforcement, such as the telephone numbers the undercover agents are using, the telephone numbers the officers are calling and receiving calls from, and witnesses’ and informants’ telephone numbers and locations. In addition, you argue that because the non-undercover officers also have contact with task force members, other law enforcement agencies, and other confidential parties, their detailed telephone records could potentially reveal law enforcement activities and therefore should be withheld also.

After reviewing your arguments and the submitted information, we conclude that you may withhold the names of the undercover officers and the cellular telephone numbers assigned to those individuals with specific law enforcement responsibilities. ORD 506. As for the telephone numbers of incoming and outgoing calls, you have not sufficiently explained how release of these numbers interferes with law enforcement. As we stated in Open Records Decision No. 636, the cellular telephone bill does not explain on its face how its release would interfere with law enforcement and crime prevention nor have you adequately done so. You do not claim that the telephone numbers relate to any active criminal investigations. Moreover, you do not assert that all of the telephone numbers of incoming and outgoing calls are those which identify an informant. The mere fact that law

²Open Records Decision No. 636 further states that

if a governmental body wants to claim that section 552.108(a) excepts certain numbers called because they relate to active criminal investigations, the governmental body must indicate which numbers it claims are excepted and detail how they relate to an active criminal investigation. Likewise, if a governmental body wants to claim that section 552.108(a) excepts a telephone number that relates to a closed case, the governmental body must indicate which numbers it claims are excepted and detail how the release of those numbers would unduly interfere with law enforcement and crime prevention.

enforcement members are communicating with each other via cellular telephones does not establish that release of this information would interfere with law enforcement. Thus, because you have not met your burden as required by Open Records Decision No. 636 and section 552.301 of the Government Code as to the remaining telephone numbers, we conclude that you may not withhold the remaining telephone numbers of incoming and outgoing calls under section 552.108. Gov't Code § 552.301(b)(4) (governmental body must label the specific information to indicate which exceptions apply to which parts of the information).

In summary, we conclude that you may withhold the following information only under section 552.108: the names of the undercover officers that appear on the telephone bills and the cellular telephone numbers assigned to those individuals with specific law enforcement responsibilities. However, you must release the remainder of the telephone records because you have not shown the applicability of section 552.108 to the remaining portions.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 118153

Enclosures: Submitted documents

cc: Mr. Charles Siderius
Staff Writer
Denton Record-Chronicle
P.O. Box 869
Denton, Texas 76202
(w/o enclosures)

Ms. Nita Thurman
Denton Bureau
Dallas Morning News
100 W. Oak
Denton, Texas 76201
(w/o enclosures)

Mr. Dean Daugherty
The Lewisville Leader
1165 S. Stemmons Freeway, Suite 100
Lewisville, Texas 75067
(w/o enclosures)