



February 3, 2000

Mr. Monty Wade Sullivan
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-0361

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131312.

The City of Houston (the "city") received a request for a specified internal affairs investigation report as well as city police procedures and policies concerning juveniles and off-duty work by city police officers. You claim that portions of the requested information are exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.1214(b) of the Local Government Code provides in pertinent part:

The department shall maintain . . . any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer that the department did not sustain, only in a file created by the department for the department's use. The department may not release those documents to any agency or other person except another law enforcement agency or fire department.

Local Gov't Code § 143.1214(b).

You state that the subject internal affairs investigation is ongoing. Because the charge of misconduct has not been sustained, we conclude that the information in this investigation file is confidential pursuant to section 143.1214(b) of the Local Government Code. This information must be withheld from disclosure under section 552.101 of the Government Code. *See* Open Records Decision No. 642 (1996) (applying section 143.1214 to documents relating to investigation conducted by Houston Police Department's Public Integrity Review where investigation concluded that allegations were unfounded).

You indicate that most of the requested procedure information will be released, but you seek to withhold certain departmental standard operating procedures, which you have submitted to this office for review. You assert that this information is excepted from public disclosure by section 552.108(a)(1) of the Government Code. This office has stated that certain procedural information may be withheld under section 552.108 of the Government Code, or its statutory predecessors. *See, e.g.,* Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To claim this aspect of section 552.108 protection, however, 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 Nos. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.,* Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention).

We have reviewed the procedures submitted to this office and the comments submitted in support of your 552.108 argument for withholding those procedures. We conclude that you have demonstrated that release of the following information would interfere with law enforcement and crime prevention and may therefore be withheld under section 552.108(a)(1) of the Government Code:

- (1) the portion of Standard Operation Procedure number 200/1.07 which specifies the times and destinations of transfers of juvenile prisoners
- 2) the portion of Standard Operation Procedure number 200/2.07 which specifies the witness requirements for disbursements to confidential informants

- 3) the portion of Standard Operation Procedure number 200/3.01 which specifies approval requirements for polygraph examinations

We have marked the information which you may withhold. The remaining submitted procedural information must be released.

In summary, the subject internal affairs investigation file must be withheld and the portions of Standard Operating Procedures 200/1.07, 200/2.07 and 200/3.01 specified above may be withheld. All other responsive information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

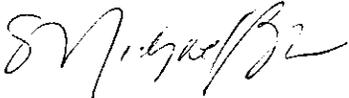
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 131312

Encl. Submitted documents

cc: Ms. Esperanza Rodriguez
1111 Paschall Street
Houston, Texas 77009
(w/o enclosures)