



April 12, 2000

Ms. Ruth H. Soucy  
Deputy General Counsel  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2000-1433

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134272.

The Comptroller of Public Accounts (the "comptroller") received a request for the floor plans of three state government buildings. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Government Code section 552.108 affords discretionary protection to the records held by a law enforcement agency or prosecutor. Section 552.108 also applies to the records of that portion of an agency whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 at 2 (1988), 287 at 2 (1981). It generally does not apply to the records of regulatory agencies. Open Records Decision No. 199 (1978). As authority for your proposition that the release of state building floor plans in the possession of state governmental bodies would "interfere with law enforcement," you cite Open Records Decision No. 493 (1988). In that decision we concluded that, to the extent that a governmental body's investigation revealed criminal conduct that the governmental body intended to report to appropriate law enforcement officials, section 552.108 would apply to the information if its release would unduly interfere with law enforcement efforts. ORD No. 493 at 1. You do not indicate that you have detected criminal activity or reported any to a law enforcement agency. We do not believe that Open Records Decision No. 493 is support for the proposition that public information in the hands of a governmental body that might facilitate speculative, potential criminal activity can be withheld.

You also cite Open Records Decision No. 521 (1989) for the proposition that "information related to specific operations or specialized equipment directly related to [the] investigation or detection of crime may be excepted from public disclosure." That decision interpreted the predecessor to section 552.108 as it applied to use of force guidelines. The governmental body in question was a law enforcement agency, the San Antonio Police Department, and the

requested information dealt with the department's highly specific guidelines for police officers confronted by violence or threatened violence when effecting an arrest or protecting the public safety. We concluded the police department was entitled to withhold the information. Again, the circumstances presented there are distinguishable from the case here.

Last, you cite Open Records Decision No. 143 (1976). In that decision, we concluded the Dallas Police Department, again, a law enforcement agency, could withhold detailed information relating to its electronic eavesdropping equipment and techniques. The equipment in question was employed by police in their primary law enforcement function of investigating crime. The predecessor to section 552.108 permitted the department to withhold this information because its release would interfere with ongoing police investigations. The floor plans you seek to withhold do not appear to serve a specific law enforcement function.

While your concern that the release of state building floor plans would benefit those intending harm to the buildings and its occupants is apparent, you have not explained how or why the plans directly relate to police techniques or law enforcement. The only analogous situations in which this office has permitted an agency to withhold such information relates to circumstances in which there is a direct relationship between the requested information and a heightened threat to security. *See* Open Records Decision No. 413 (1984) (sketch detailing Texas Department of Corrections security measures related to impending execution); *see also* Open Records Decision No. 410 at 5 (1983) (reasonableness of security concern to be judged by the Attorney General).

As we noted in Open Records Decision No. 413, floor plans of government buildings are public information subject to disclosure. Open Records Decision No. 413 at 1 (1984). You assert that the release of the floor plans implicates and jeopardizes agency security and safety and that these special circumstances warrant application of section 552.108. To this end, you have provided a letter from the commander of the Capitol Police District which states that release of the floor plans "would pose a serious threat to the state office buildings." Neither you nor the commander elaborate on these assertions. We cannot conclude from general assertions that because members of the public might use public information for criminal purposes that the information must be withheld from disclosure based on section 552.108. We do not contest that the information you seek to withhold may assist a criminal element, as would road maps, phone directories, and lists naming state employees. *See* Gov't Code § 552.204. Yet the public has an interest in each of these types of information.

You also state that the General Services Commission is "the proper custodian for the requested information." You indicate, however, that the comptroller "has copies of the floor plans for the L.B.J., Starr, and Rusk buildings." We understand that the comptroller collects and maintains this information. Gov't Code § 552.002(a). Consequently, absent a particularized threat or risk, the comptroller must release the requested information. We note that section 552.222 provides that the government body may make inquiry to the requestor to establish proper identification. Gov't Code § 552.222(a).

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.

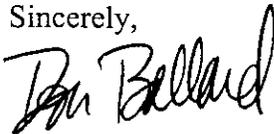
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Don Ballard  
Assistant Attorney General  
Deputy Chief, Open Records Division

JDB/CHS/ljp

Ref: ID# 134272

Encl. Submitted documents

cc: Ms. Christine Butterfield  
3625 Austin Center Boulevard  
Austin, Texas 78731-3197  
(w/o enclosures)