



March 12, 2002

Mr. J. Middlebrooks
Assistant City Attorney
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2002-1188

Dear Mr. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159804.

The Dallas Police Department (the "department") received four requests for information from two requestors. The first request seeks "[a] year-to-date itemized listing of recorded activity between narcotics detective Mark De La Paz and confidential informants used by the narcotics division, including dates of meetings and amount and date of payments" and "[t]he total amount of funds spent by the narcotics division on confidential informants year to date." The second request seeks "expense reports for any and all [department] officers for the past two years." The third request seeks the "Standard Operating Procedures/Policies by Dallas Police regarding the use of informants and/or confidential informants in investigations." The fourth request seeks:

An itemized listing [of] all recorded activity for calendar years 2001 and 2000 between narcotics detective Mark De La Paz and confidential informants used by the narcotics division including dates of meetings and amount and date of payments. If possible service numbers of offense reports related to those payments.

An itemized listing [of] all recorded activity for calendar years 2001 and 2000 between narcotics detective Eddie Herrera and confidential informants used by the narcotics division, including dates of meetings and amount and date of payments. If possible, service numbers of offense reports relates to those payments.

An itemized listing [of] all recorded activity for calendar years 2001 and 2000 between narcotics detective Mark Woody and confidential informants used by the narcotics division, including dates of meetings and amount and date of payments. If possible, service numbers of offense reports related to those payments.

The total amount of funds spent on confidential informants for calendar years 2001 and 2000.

An explanation of procedures for recruiting paid confidential informants, including procedures for executing arrests, the use of audio recording and video equipment.

A payment schedule explaining how paid informants are compensated.

You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered the comments submitted by counsel for the requestors. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we note that section 552.022 of the Government Code makes certain information public, unless it is expressly confidential under other law. One category of public information under section 552.022 is information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body. *See* Gov't Code § 552.022(a)(3). The submitted information includes information that is subject to section 552.022(a)(3). As section 552.108 is a discretionary exception, it is not considered "other law" for the purpose of section 552.022(a)(3). Consequently, the information that is subject to section 552.022(a)(3), which we have marked, may not be withheld under section 552.108. The department may withhold this information only if it is confidential under other law.

Thus, we address whether any of the information subject to section 552.022(a)(3) must be withheld under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right of privacy.

¹We 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.

Ordinarily, information is protected by common-law privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, *and* (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). However, information also may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You inform us that the department's narcotics officers and informants have infiltrated criminal groups. You assert that the involved officers and informants would face an imminent threat of physical danger if their identities and specific undercover activities were released to the public. Because of your handling of the requested information and the particular circumstances present in this request for a decision, we conclude that in this instance only the badge numbers and names of the undercover narcotics officers and the names and numbers of the informants, which we have marked, are confidential under section 552.101 in conjunction with common-law privacy and must be withheld from the requestor. *See* Open Records Decision No. 169 (1977).

We will now address the applicability of section 552.108 of the Government Code to the remaining information. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that some of the submitted information pertains to a pending criminal investigation that is being conducted by the department's Public Integrity Unit. We therefore believe that the release of some of the submitted information "would interfere with the detection, investigation, or prosecution of crime." *Id.* Thus, the department may withhold the information regarding the pending criminal investigation, which we have marked, based on section 552.108(a)(1).

You also claim that some of the submitted information is excepted under section 552.108(b)(1) of the Government Code. Section 552.108 provides in pertinent part as follows:

(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[.]

Gov't Code § 552.108(b)(1). 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 No. 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).

You state that the submitted information includes sensitive procedures used by narcotics and vice officers in the field and sensitive information used by undercover officers in their interaction with confidential informants in the field. Based on your arguments and our review of the submitted information, we conclude that some of the submitted information, which we have marked, may be withheld under section 552.108(b)(1) of the Government Code.

To summarize, (1) we have marked the information that the department must withhold under section 552.101 and common-law privacy; (2) we have marked the information that the department may withhold under sections 552.108(a)(1) and 552.108(b)(1); and (3) the remaining 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 159804

Enc: Submitted documents

c: Mr. Robert Tharp
Staff Writer
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)

Mr. Mark Smith
Producer
WFAA-TV
606 Young Street
Dallas, Texas 75202
(w/o enclosures)

Ms. Dionne Carney Rainey
Jenkins & Gilchrist
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202
(w/o enclosures)