



April 16, 2002

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2002-1917

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161640.

The El Paso Police Department (the "department") received a request for five categories of "El Paso Police Department's Policies, Procedures and Training Manuals." You state that the department will release information responsive to categories two, four, and five of the request. You also state that the information responsive to category one of the request is included in the information responsive to category three involving the use of force. You claim that category three of the request is excepted from disclosure under sections 552.108 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that you inform us that you "are still waiting for the requestor to provide a relevant time period for the requests" and that the "Police Department has had four different policies on the use of force in effect at various times in the past approximate 25 years." You further state that the department has obtained five opinions from this office regarding what portions of these four policies the department may withhold under section 552.108 of the Government Code. This office issued Open Records Letter Nos. 00-3794 (2000), 00-0491 (2000), 99-2173 (1999), 99-0733 (1999), and 91-519 (1991), in which we ruled that the department could withhold portions of its use of force policies. Should the current request seek information that is identical to the information previously requested and ruled upon by this office in OR2000-3794, OR2000-0491, OR1999-2173, OR1999-0733, and OR1991-519, we conclude you must rely on these rulings as previous determinations and withhold the requested information in accordance with OR2000-3794, OR2000-0491, OR1999-2173, OR1999-0733, and OR1991-519. *See* Open Records Decision No. 673 (2001) (so long as law, facts, the circumstances on which prior ruling was based have not changed, the first type

of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not excepted from disclosure).

You state that information responsive to categories one and three of the request also includes lesson plans and training materials that frequently undergo revisions and updating. You have submitted this information in Exhibits E and F and claim section 552.108 of the Government Code as an exception from disclosure for the portions you have highlighted. Section 552.108(b)(1) of the Government Code excepts from public disclosure “[a]n 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” if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108. When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986). We have previously held that portions of police procedures are excepted under section 552.108(b)(1) because release of the procedures would impair an officer’s ability to enforce the law and would place individuals at an advantage in confrontations with the police. See Open Records Decision No. 531 (1989). However, portions of the procedures that relate to generally known common law rules, constitutional limitations, or Penal Code provisions are deemed public information. *Id.* at 3.

With respect to the current lesson plans and training materials, you argue that release of certain highlighted information “would endanger the lives and safety of police officers.” After reviewing your arguments and the submitted information, we conclude that you may withhold the highlighted information in Exhibits E and F. See *id.*; Gov’t Code § 552.108(b)(1).

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee’s overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; see also Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). See Open Records Decision No. 626 at 8 (1994).

You contend that Exhibit G is excepted from disclosure under section 552.122(b) of the Government Code. After reviewing the submitted information, we agree that the information in Exhibit G constitutes "test items" as contemplated by section 552.122(b). Accordingly, the department may withhold Exhibit G pursuant to section 552.122(b) of the Government Code.

To summarize: (1) for information that is identical to the information previously requested and ruled upon by this office in OR2000-3794, OR2000-0491, OR1999-2173, OR1999-0733, and OR1991-519, we conclude you must rely on these rulings as previous determinations and withhold the requested information in accordance with OR2000-3794, OR2000-0491, OR1999-2173, OR1999-0733, and OR1991-519; (2) you may withhold the highlighted information in Exhibits E and F pursuant to section 552.108(b); and (3) the department may withhold Exhibit G pursuant to section 552.122(b).

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).

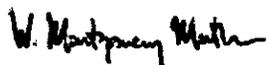
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 161640

Enc: Submitted documents

c: Mr. James W. Terrell
325 Belvidere Street
El Paso, Texas 79912
(w/o enclosures)