



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 21, 2003

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR2003-1949

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178201.

The Texas Department of Public Safety (the "department") received a request for information pertaining to the requestor's application for a concealed handgun license. You indicate that the department has released some responsive information to the requestor, since the requestor, as a handgun licensee, is "seeking information regarding his own license application." We note that section 411.192 of the Government Code makes some information pertaining to concealed handgun licenses confidential. *See* Gov't Code § 411.192. This section also provides ". . . that the applicant or license holder may be furnished a copy of disclosable records on request." *Id.* In this instance, you claim that the information that you have submitted is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Section 552.108(b) excepts from 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: (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 under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques. *See, e.g.,* Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly

interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). In order for a governmental body to claim this exception, however, it 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. *See* Open Records Decision No. 562 at 10 (1990). Furthermore, generally 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). Whether disclosure of particular records will interfere with law enforcement or prosecution must be decided on a case-by-case basis. *See* Attorney General Opinion MW-381 (1981).

You state that the submitted information pertains to specific indicators that officers use to determine if an applicant is entitled to receive a concealed handgun license. You also state that if it becomes public how the department conducts background investigations on applicants for such licenses, applicants can take steps to conceal information from the department that would normally disqualify them from obtaining such licenses. Further, you state that the concealment of this information, in turn, "could result in individuals who are not really eligible being licensed to carry a concealed handgun, which ultimately would only serve to endanger the public by exposing them to the peril of unqualified individuals being allowed to carry concealed handguns." Thus, you contend that making such information available to the public might allow individuals to subvert the intent of the law, thereby constituting interference with the enforcement of that law. Based on our review of your arguments and the submitted information, we find that the release of portions of the information, which we have marked, would interfere with law enforcement or crime prevention. *See* Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts unless information does so on its face). However, we also find that the release of the remaining submitted information would not interfere with law enforcement or crime prevention, since the department has given the general public knowledge that this type of information is used in the department's

investigative process, through publication of the department's concealed handgun license administrative rules. *See, e.g.*, 37 T.A.C. §§ 6.13(d), .15(2)(G), (6)(C), .16, .17(c). Accordingly, we conclude that the department may withhold the marked information pursuant to section 552.108(b)(1) of the Government Code. The department must release the remaining submitted information to the requestor.¹

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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹ We note, however, that if the department receives another request for this information and the person that requests the information does not have a special right of access to it either under section 411.083(b) of the Government Code, with respect to the results of the criminal history background check, or under section 552.023 of the Government Code, the department should resubmit the information to us and request another ruling concerning its public availability.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 178201

Enc. Marked documents

c: Mr. Anthony B. Crager
4425 Malone Road
Midway, Texas 75852
(w/o enclosures)