



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 20, 2003

Ms. J. Middlebrooks  
Assistant City Attorney  
Dallas Police Department  
1400 South Lamar Street, #300A  
Dallas, Texas 75215-1801

OR2003-4257

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183050.

The City of Dallas Police Department (the "department") received a request for "all records pertaining to the surveillance of political, social and religious organizations, for the period 2000 to the present," as well as "the current standards and guidelines for intelligence gathering of political, social or religious groups and any changes in those standards and guidelines which have occurred since 2000." You indicate that the department will release some of the requested information. However, you claim that the remainder of 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.<sup>1</sup>

We begin by addressing your argument under section 552.108 of the Government Code. Section 552.108 provides, in part:

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<sup>1</sup>We 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.

(a) 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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime.

....

(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 [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution.

....

Generally, a governmental body claiming section 552.108(a)(1) or (b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You contend that the submitted information is excepted from disclosure under section 552.108(a)(1) because release of the information could help investigated persons avoid detection and could jeopardize the safety of undercover officers, witnesses, and informants by helping investigated persons to identify the officers, witnesses, and informants. This office has found that the identities of undercover officers and witnesses may be withheld from disclosure under section 552.108 in some circumstances. *See* Open Records Decision Nos. 297 (1981) (names and statements of witnesses may be withheld if disclosure might subject witnesses to possible intimidation or harassment or harm prospects of future cooperation between witnesses and law enforcement), 211 (1978) (information revealing identity of undercover officers excepted under section 552.108). Here, however, we find that you have not adequately demonstrated how the submitted information could be used to identify an undercover officer, informant, or witness. Furthermore, we find that you have not adequately demonstrated how release of the submitted information would aid an individual in avoiding detection by the police. Therefore, we find that you have not adequately demonstrated that the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code.

You also contend that the submitted information is excepted from disclosure under section 552.108(b)(1) of the Government Code because “[t]he requested information consists of internal records maintained for internal matters ‘related to law enforcement’ that, if

released, could interfere with the department's objective of protecting the public safety. However, you have not specifically explained how release of the information would interfere with law enforcement efforts. Therefore, the department may not withhold the submitted information under section 552.108(b)(1).

Next, you contend that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Chapter 61 of the Code of Criminal Procedure deals with intelligence information pertaining to street gangs. Article 61.02 provides in part that "a criminal justice agency may compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs." Article 61.03 provides in relevant part:

(a) A criminal justice agency that maintains criminal information under this chapter may release the information on request to:

- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

Crim. Proc. Code art. 61.03(a). You indicate that portions of the submitted information consist of intelligence information relating to criminal street gangs. Furthermore, you do not indicate that the requestor is entitled to the information under article 61.03. Based on your representations and our review of the submitted information, we conclude that the department must withhold the gang information you have marked under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure. The department must release the remainder of the submitted information.

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).

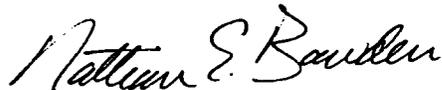
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 183050

Enc: Submitted documents

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