



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 26, 2003

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2003-4407

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 182680.

The Houston Police Department (the "Department") received a request for four categories of information related to professional development training of Department police officers. You inform us that the Department's Media Relations Division will release some of the requested information. However, you assert the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have reviewed the information you submitted and we have considered the exception you claim.

Initially, we note the applicability of section 552.101 of the Government Code, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information made confidential by other statutes. In House Bill 9, the Seventy-eighth Legislature recently amended subchapter H of chapter 418 of the Government Code by adding sections 418.176 through 418.183. House Bill 9, which became effective immediately upon signature by the Governor on June 22, 2003, provides, in relevant part, as follows:

**Sec. 418.176. CONFIDENTIALITY OF CERTAIN INFORMATION
RELATING TO EMERGENCY RESPONSE PROVIDERS.**

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

....

Act of June 2, 2003, 78th Leg., R.S., H.B. 9, § 3 (to be codified at Gov't Code § 418.176). In this instance, Exhibit 4 contains tactical plans and staffing requirements related to the Department's response to an act of terrorism. Therefore, we conclude section 418.176 makes this information confidential. Accordingly, the Department must withhold the information we have marked under section 552.101 in conjunction with section 418.176 of the Government Code.

With respect to the remainder of the submitted information, we address your claims under section 552.108 of the Government Code. This provision 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 a governmental body may withhold certain procedural information 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), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). Also, this office has concluded that section 552.108 excepts from public disclosure information that relates to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision No. 531 (1989) (holding that section 552.108 excepts detailed guidelines regarding a police department's use of force policy). However, to claim protection under this aspect of section 552.108, a governmental body must meet its burden of explaining 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, a governmental body may not withhold commonly known policies and techniques 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 its burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Open Records Decision No. 409 at 2 (1984). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *Id.*

In this instance, you have provided affidavits from four Department officers which provide detailed reasons to withhold Exhibits 2 through 5. After reviewing your arguments, the affidavits, and the documents at issue, we conclude that you have established the applicability of section 552.108(b)(1) to some of the submitted information. However, we conclude most of the information does not warrant protection under section 552.108. Accordingly, the Department may withhold the information we have marked under section 552.108(b)(1) of the Government Code.

In summary, the Department must withhold the information we have marked under sections 552.101 and 418.176 of the Government Code. The Department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The Department must release the remainder of the information to the requestor.

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).

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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 182680

Enc: Submitted documents

c: Ms. Yolanda Smith
Executive Director
National Association for the Advancement of Colored People
2002 Wheeler
Houston, Texas 77004
(w/o enclosures)