



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2003

Mr. Chris Borunda
Ray, Valdez, McChristian & Jeans
5822 Cromo Drive
El Paso, Texas 79912

OR2003-8007

Dear Mr. Borunda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190687.

The City of Socorro Police Department (the "department"), which you represent, received a request for the "Policies and Procedures" of the department. You state that the majority of the Policies and Procedures Manual has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency 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." 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; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

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; Open Records Decision No. 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

In this instance, you state that the highlighted portions of the submitted manual “reveal specific law enforcement techniques and procedures” which, if released, could jeopardize the lives and safety of police officers as well as the general public and give an advantage to criminals. You also state that the marked information does not relate to generally known common-law rules, constitutional limitations, or Penal Code provisions. Upon review, we find you have demonstrated that the release of some of the information you have highlighted would interfere with law enforcement. Accordingly, we have marked the information that the department may withhold pursuant to section 552.108(b)(1) of the Government Code. The remaining information must be released 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 190687

Enc. Submitted documents

c: Mr. Manuel Cota
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(w/o enclosures)