



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

November 10, 2003

Ms. April M. Virnig  
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600 Western Place, Suite 200  
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Fort Worth, Texas 76107-4654

OR2003-8059

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190917.

The City of Haltom City (the "city"), which you represent, received a request for "protocols which deal with dispatching an officer on a 911 cell call" and for specific information pertaining to "the system in place for receiving 911 cell calls." You state that some responsive information has been released to the requestor. You claim that portions of the requested information are 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.

You state that the operations manuals at issue contain a confidentiality notice from a third party with a statement indicating that such information was to remain confidential. However, information that is subject to disclosure under the Public Information Act (the "Act") may not be withheld simply because the party submitting it anticipates or requests confidentiality. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 676-78 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Further, it is well-settled that a governmental body's promise to keep information confidential is not a basis for withholding that information from the public, unless the governmental body has specific authority to keep the information confidential. *See Open Records Decision Nos. 514 at 1 (1988), 476 at 1-2 (1987), 444 at 6 (1986)*. Consequently, the submitted information must fall within an exception to disclosure in order to be withheld.

We understand you to assert that the information that you have submitted to us for review is excepted from disclosure under section 552.101 of the Government Code in conjunction with the Federal Copyright Act (the "FCA"), title 17 of the United States Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. We note, however, and you acknowledge, that the FCA does not contain a confidentiality provision that makes the submitted information confidential for the purpose of the Act. *See* Open Records Decision Nos. 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (confidentiality protected by section 552.101 requires express language making certain information confidential or requires that information not be released to public). Therefore, no portion of the submitted information may be withheld under section 552.101 in conjunction with the FCA.

Nevertheless, a custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted, such as is the case here. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

You also claim that the information at issue is excepted from disclosure under section 552.108(b)(1), which 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). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). 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).

To claim this exception, however, a governmental body 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. 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).

Based on our review of your arguments and the submitted information, we find that you have not adequately demonstrated that the release of the submitted information would interfere with law enforcement or crime prevention. *See* Gov't Code § 552.108(b)(1). Accordingly, we conclude that the city may not withhold any portion of the submitted information under section 552.108 of the Government Code. The city must, therefore, release the requested information to the requestor in its entirety in accordance with applicable copyright law.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 190917

Enc. Submitted documents

c: Mr. George E. West II  
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(w/o enclosures)