



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 29, 2004

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

OR2004-0629

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# 195210.

The Dallas Police Department (the "department") received a request for "[a] list of all Dallas Police employees on administrative leave, including any records showing the date employees were assigned to administrative leave and cause." You state that you are withholding some of the requested information in accordance with the previous determination issued in Open Records Decision No. 670 (2001). *See* Open Records Decision No. 670 (allowing all governmental bodies that are subject to Public Information Act to withhold information that is subject to predecessor of section 552.117(a)(2) without necessity of seeking decision from this office); *see also* Open Records Decision No. 673 (2001) (criteria of previous determination regarding specific categories of information). You claim that other 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.<sup>1</sup>

You contend that the identities of undercover officers are excepted from disclosure under section 552.108. This section provides, in part:

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<sup>1</sup>To the extent any additional responsive information exists, we assume you have released it to the requestor. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

(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[.]

Gov't Code § 552.108(a)(1), (b)(1). 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).

In this instance, you state that the department has “invested time and resources in the training of these [officers] in undercover work” and argue that “release of [their identities] would interfere with the ability of these officers to perform in an undercover capacity in future criminal investigations.” Based on these representations, we conclude that the identities of the undercover officers may be withheld pursuant to section 552.108(b)(1). See Open Records Decision Nos. 456 at 2 (1987) (statutory predecessor to section 552.108 protected information that, if revealed, might endanger life or physical safety of law enforcement personnel), 211 at 4 (1978) (statutory predecessor protected identities of members of Attorney General’s Organized Crime Task Force engaged in undercover narcotics work). Because you do not claim any exceptions for the remaining submitted information and it is not otherwise confidential by law, this information must be released.

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).

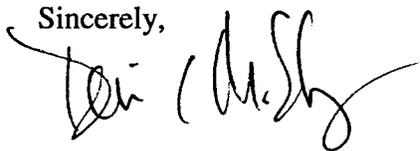
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 195210

Enc. Submitted documents

c: Mr. Todd Bensman  
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(w/o enclosures)