



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 3, 2004

Mr. James M. Frazier III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2004-4529

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202826.

The Texas Department of Criminal Justice (the "department") received a request for copies of paperwork in the requestor's personnel file, and shift rosters for the month of December 2002. You claim that some of the requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.<sup>1</sup>

Initially, we note that you have not submitted copies of any responsive personnel file documents to this office for review, nor do you tell us that you have released any such information to the requestor. Therefore, to the extent it exists, you must immediately release such information to the requestor if you have not already done so. *See Gov't Code §§ 552.006, .301(a), .302; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

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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.

You contend that the requested shift rosters are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from 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.” Generally, a governmental body claiming section 552.108(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(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.,* Open Records Decision Nos. 531 (1989) (holding that predecessor to section 552.108 excepts detailed guidelines regarding a police department’s use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution). You state that the requested shift rosters indicate the name and placement of certain officers within the unit or whether a particular post was manned on certain days. You also contend that this information, if released, could “help inmates in their future attempts to circumvent the security of the prison unit.” Having reviewed your arguments and the submitted information, we agree that the release of the rosters would interfere with law enforcement or crime prevention. Accordingly, the department may withhold the requested shift rosters from disclosure under section 552.108(b)(1) of the Government Code. Because our ruling is dispositive, we need not address your section 552.117 argument.

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

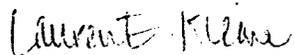
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/seg

Ref: ID# 202826

Enc. Submitted documents

c: Mr. Steve Freeman  
8989 Tulane Road  
Orange, Texas 77630  
(w/o enclosures)