



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2004

Mr. Michael J. Jauch  
Chief of Police  
Hubbard Police Department  
118 N. Magnolia Street  
Hubbard, Texas 76648

OR2004-4851

Dear Mr. Jauch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203434.

The City of Hubbard (the "city") received a request for nine items of information for, among other things, information pertaining to the requestor and certain city police department "General Orders." The city also received from the same requestor a request for six items of information pertaining to "complaint[s] and/or letter[s]" submitted by the requestor to the city. You state that the city has released to the requestor information that is responsive to item three of the first request. You indicate that the city does not maintain information that is responsive to items four through eight of the first request.<sup>1</sup> You claim that the remaining information that is responsive to the first request is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the city did not submit to us any information that is responsive to the requestor's second request for information. We, therefore, presume that the city has already

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<sup>1</sup> We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

provided the requestor with this information to the extent that it existed on the date of the city's receipt of the second request. If not, then the city must release that information to the requestor at this time. *See* Gov't Code §§ 552.006, .301, .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 under circumstances).

Next, we note that the submitted information includes an arrest warrant and associated arrest warrant affidavit. The 78th Legislature has amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26. Thus, the arrest warrant and associated arrest warrant affidavit that we have marked are made public under article 15.26 of the Code of Criminal Procedure. As a general rule, the exceptions to disclosure found in the Act do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, we conclude that the city must release the marked arrest warrant and associated arrest warrant affidavit to the requestor pursuant to article 15.26 of the Code of Criminal Procedure.

You claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure of requested information must demonstrate how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that portions of the remaining submitted information pertain to active criminal investigations. Thus, based on your representation and our review of the submitted information, we agree that section 552.108(a)(1) applies to this information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th

Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, to include detailed description of offense). Accordingly, we conclude that with the exception of basic information that must be released to the requestor, the city may withhold the information that we have marked pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the city maintains the discretion to release all or part of this information that is not otherwise confidential by law. See Gov't Code § 552.007.

Finally, you claim that the remaining submitted information is excepted from disclosure pursuant to subsections 552.108(b)(1) and (2) of the Government Code. Section 552.108(b), in part, 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; [or] (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(1), (2). Section 552.108(b) is generally 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 exhibits pattern that reveals investigative techniques, information is excepted under section 552.108), 341 (1982) (release of certain information from DPS 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).

However, in order for a governmental body to claim this exception to disclosure, it must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. See 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 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).

You state that the release of the information at issue “could compromise the way the [city’s police] department handles situations” and “raises Officer Safety issues.” Based on your arguments and our review of the information at issue, we find that the city has adequately demonstrated that the release of portions of this particular information, which we have marked, would interfere with law enforcement or crime prevention. *See* Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts). Accordingly, we conclude that the city may withhold these marked portions of the remaining submitted information pursuant to section 552.108(b)(1) of the Government Code.

In summary, the city must release the marked arrest warrant and associated arrest warrant affidavit to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. With the exception of basic information that must be released to the requestor, the city may withhold the information that we have marked pursuant to section 552.108(a)(1) of the Government Code. The city may also withhold the information that we have marked pursuant to section 552.108(b)(1) of the Government Code. The city must release the remaining submitted 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

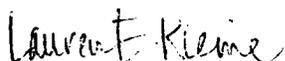
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/RJB/krl

Ref: ID# 203434

Enc. Marked documents

c: Mr. Mitchell B. Vardeman  
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(w/o enclosures)