



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 1, 2004

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2004-7452

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208457.

The City of El Paso (the "city") received a request for the following information relating to the police department's crime scene unit: (1) crime scene manuals, policies, and procedures and (2) names and badge numbers of officers assigned to that unit. You indicate that information responsive to item 2 has been released but claim that portions of the submitted information are 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 of the Government Code provides, in part:

(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(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in [a law enforcement agency], avoid detection, jeopardize officer safety, and generally undermine

[law enforcement] efforts to effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). 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 or procedures. *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 predecessor to 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) (predecessor to 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, a governmental body must explain how and why release of the requested information would interfere with law enforcement and crime prevention. Gov’t Code §§ 552.108(a)(1), (b)(1), .301; Open Records Decision No. 562 at 10 (1990). 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 predecessor to 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).

You state that “release of this information would detrimentally affect the ability of crime scene unit officers to effectively process crime scenes and locate and collect valuable evidence.” You inform us that “if the criminal element knows these specific techniques and procedures, suspects can use this information to hide, destroy or remove evidence of criminal activity that otherwise could have been located and collected.” You also explain that “the criminal element could use this information to stage a crime scene, plant false evidence, or to obtain ideas regarding how evidence could be contaminated or rendered useless.” You further argue that “releasing information regarding how narcotics are stored, used and destroyed would jeopardize the high level of security that is necessary to control, store and dispose of narcotics evidence.” Based on your arguments and our review, we agree that the release of portions of the submitted information would interfere with law enforcement. Accordingly, we conclude that the city may withhold the portions of the submitted information we have marked under section 552.108(b)(1) of the Government Code. As for the remaining information, it is general in nature, and you have failed to explain how its

release “would interfere with law enforcement or prosecution.” Thus, none of the remaining submitted information may be withheld pursuant to section 552.108(b)(1). As the city claims no other exceptions for this information, it 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,

A handwritten signature in cursive script, appearing to read "Amy Peterson".

Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 208457

Enc. Submitted documents

c: Ms. Edythe M. Payan  
Office of the Public Defender  
500 East San Antonio, Room 401  
El Paso, Texas 79901  
(w/o enclosures)