

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2005

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702

OR2005-05825

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 227118.

The City of Waco (the "city") received a request for the police department's "policies and procedures as [they relate] to the rules and regulations for issuing a warning ticket and warning violations" and the rules regarding "trespassing procedures and . . . violations." You state that you will release a portion of the requested information, but claim that the marked portions of Exhibit 3 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(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). 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." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ).

To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law

enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) 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) (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), 252 (1980) (Gov't Code § 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). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *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 not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The city has marked certain information under section 552.108, claiming that “[t]o reveal [this] information would allow violators to know they could drive in a certain unlawful manner and not be cited for violations.” However, the city states that “officers are allowed to issue warning tickets for some violations and also given discretion regarding whether to cite someone for some violations.” Based on your representation that police officers retain the discretion to issue tickets or warnings in these particular situations, we find that you have failed to demonstrate how individuals could use this information to avoid citations. Accordingly, we conclude that most of the information you seek to withhold is not excepted under section 552.108(b)(1) and must be released. We have marked a small amount of information that may be withheld under section 552.108(b)(1).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 227118

Enc. Submitted documents

c: Ms. Rhonda Taylor
9107 Woodgate Circle E.
Waco, Texas 76712
(w/o enclosures)

CAUSE NO. GN5-02638

CITY OF WACO, TEXAS,
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345TH JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JUL 25 2007
At *[Signature]* M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. By their motion, Plaintiff City of Waco, Texas ("Waco") and Defendant Greg Abbott, Attorney General of Texas, announce to the Court that all matters of fact and things in controversy between them have been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestor, Rhonda Taylor, was sent reasonable notice of this setting and of the parties' agreement that Waco may withhold some of the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information in the column titled "Cite" in the Chart of Uniform Tolerance in Order No. 60.01 (11-09-92), that is highlighted in pink in the copy provided to the Attorney General under the Agreed Protective Order, is excepted from disclosure under Tex. Gov't Code Ann. § 552.108(b)(1).

The pink highlighted information in the column titled "Warn" in the Chart is excepted from disclosure under Tex. Gov't Code Ann. § 552.108(b)(1), except for the following information: (1) "Any violation less than citation tolerance;" and (2) "Any obvious violation less than citation tolerance."

2. Waco may withhold from the requestor the pink highlighted information in the columns titled "Cite" and "Warn," except for items (1) and (2), as described in ¶ 1 of this Agreement.

3. Waco no longer contests the disclosure of items (1) and (2), as described in ¶ 1 of this Agreement. If it has not already done so, Waco will disclose this information to the requestor promptly upon receipt of a final judgment signed by the court.

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

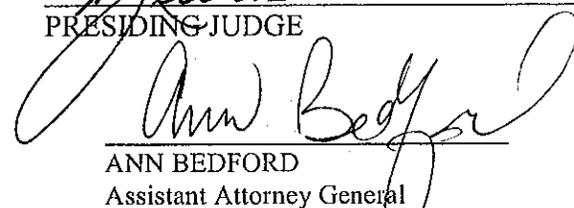
SIGNED this the 25 day of July, 2007.


PRESIDING JUDGE

APPROVED:



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