



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2005

Mr. Patrick W. Christensen
Assistant District Attorney
Cameron County District Attorney
974 East Harrison
Brownsville, Texas 78520

OR2005-08656

Dear Mr. Christensen:

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# 232868.

The Cameron County Drug Enforcement Task Force (the "task force") received a request for information pertaining to the task force. You state that portions of the requested information will be released to the requestor. You state that the task force does not maintain information responsive to the request for polygraph examinations of criminal informants or TECLEOSE forms L-1 and L-5 for its officers.¹ You 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, a portion of which consists of a representative sample.²

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

²We 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.

Initially, we note that, for the requested copies of current confidential informant agreements, the requestor states that “names and identifying information redacted is fine[.]” Thus, the names and other identifying information of current informants in the submitted information is not responsive to the request for information. This ruling therefore does not address the public availability of this nonresponsive information, and the task force is not required to release this information in response to this request. *See Bustamante*, 562 S.W.2d at 268.

We also note that you have not submitted “[a]ny citizen complaints filed against the task force or its officers for the period January 1, 2004 to the present” nor have you indicated that such information does not exist. Therefore, if any information responsive to this request existed on the date of the task force’s receipt of this request, we assume the task force has already released it to the requestor. If the task force has not released this information, the task force must release it to the requestor at this time. *See Gov’t Code* §§ 552.006, .301, .302; 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).

We turn now to the exceptions you claim for submitted information. Section 552.108 provides in part:

(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[.]

Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See Gov’t Code* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that the release of the daily case log submitted as Exhibit D “would interfere with the detection, investigation or prosecution of crime.” We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*. *See* 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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 127 (1976) (summarizing types of

information considered to be basic information). Although we agree that the daily case log relates to pending criminal investigations, we note that these documents consist entirely of basic information that is not excepted from disclosure under section 552.108. Consequently, no portion of Exhibit D may be withheld pursuant to section 552.108.

The task force raises section 552.108(b)(1) for portions of the remaining information. Section 552.108(b)(1) 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.” Gov’t Code § 552.108(b)(1). This section 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department’s use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment).

The task force claims that portions of the weekly report submitted as Exhibit C, the entire personnel file submitted as Exhibit E, and the confidential informant agreement submitted as Exhibit F are excepted from disclosure under section 552.108(b)(1). You state that the task force officers depicted in Exhibits C and E are undercover agents “involved in cases involving the sale and trafficking of illegal narcotics.” You further state that release of the task force undercover officers’ identities would “interfere in [their] law enforcement activities and could endanger [their lives].” The task force also claims that release of the identities of confidential informants would “interfere with their assistance in law enforcement activities and could endanger their lives.” The task force further states that “all past confidential informants are not completely discharged, but are merely dormant and could be of assistance in future investigations.” Based on your representations, we conclude that the portion of Exhibit C that identifies a task force undercover officer and Exhibit E may be withheld under section 552.108(b)(1). We also find that the task force may withhold the names of past confidential informants in Exhibit F under section 552.108(b)(1). As for the remaining information in Exhibit F, we find you have failed to explain how its release “would interfere with law enforcement or prosecution.” Therefore, none of the remaining information in Exhibit F may be withheld under section 552.108(b)(1).

In summary, the task force may withhold: 1) the portion of Exhibit C that identifies an undercover officer, 2) the personnel file of the undercover task force officer submitted as

Exhibit E, and 3) the names of past confidential informants in Exhibit F under section 552.108(b)(1) of the Government Code. The remaining submitted information 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, 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 Office of the Attorney General 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. 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 black ink that reads "L. Joseph James". The signature is written in a cursive style with a large initial "L" and a long, sweeping underline.

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 232868

Enc. Submitted documents

c: Mr. Scott Henson
ACLU of Texas Police Accountability Project
P.O. Box 12905
Austin, Texas 78711
(w/o enclosures)