



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2005

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P. O. Box 368
Houston, Texas 77002

OR2005-09481

Dear Mr. Gambrell:

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# 233551.

The Houston Police Department (the "department") received a request for several categories of information regarding the department's surveillance and data gathering of the May 18, 2005 demonstrations of the Halliburton Shareholder's meeting. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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). To claim this aspect of section 552.108 protection, however, 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). Further, commonly 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 any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

In this instance, you state that Exhibits A, B, and D through L are educational instruments for the department's officers regarding policies and procedures with respect to demonstrations. You state that release of this information would increase an individual's chances at evading arrest or injuring officers or other persons by equipping an individual with counter-measures or tactics aimed at defeating department officers during a demonstration. After reviewing the information at issue and your arguments, we agree that the marked portions of Exhibits B and H, as well as the entirety of Exhibits G, I, and K would, if released, interfere with law enforcement. Thus, the marked portions of Exhibits B and H, as well as the entirety of Exhibits G, I, and K may be withheld under section 552.108(b)(1) of the Government Code. As to the remaining information, you have failed to demonstrate that this information is not routine investigative procedures or techniques that are commonly known. Further, you have failed to demonstrate that releasing the remaining information would interfere with law enforcement. Accordingly, this information may not be withheld under section 552.108(b)(1).

You claim that Exhibits M and N are excepted under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted police reports pertain to cases that are closed and concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibits M and N.

We note, however, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Although section 552.108(a)(2) authorizes you to withhold the remaining information in Exhibits M and N from disclosure, you may choose to release all or part of these exhibits that is not otherwise confidential by law. See Gov't Code § 552.007.¹

You claim that Exhibit L contains the home address of a peace officer that is excepted under section 552.1175 of the Government Code. Section 552.1175 applies to peace officers and provides in pertinent part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). This provision allows a peace officer who is not employed by the department to elect to restrict access to his home address and telephone number, social security number, and family member information. However, Exhibit L reflects that the officer in question is employed by the department. Accordingly, section 552.1175 of the Government Code is inapplicable in this instance.

We note, however, that the home address of the peace officer in Exhibit L is excepted under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential.² See Gov't Code § 552.117(a)(2). Pursuant to section 552.117(a)(2), the department must withhold the peace officer's home address we have marked in Exhibit L. See also Open Records Decision No. 670 (2001) (previous

¹Because our ruling is dispositive for these Exhibits, we need not address your other arguments against disclosure.

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

determination that governmental body may withhold home address, home telephone number, personal cellular phone number, personal pager number, social security number and information that reveals whether individual has family members, of any individual who meets definition of "peace officer" set forth in article 2.12 of Texas Code of Criminal Procedure without necessity of requesting attorney general decision as to whether exception under section 552.117(a)(2) applies).

In summary, the department may withhold the marked portions of Exhibits B and H, as well as the entirety of Exhibits G, I, and K under section 552.108(b)(1) of the Government Code. With the exception of the basic information, the department may withhold Exhibits M and N under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked in Exhibit L under section 552.117(a)(2) of the Government Code. The remaining information must be released.

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).

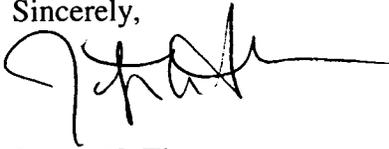
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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, appearing to read 'J. Thompson', with a long horizontal flourish extending to the right.

Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 233551

Enc. Submitted documents

c: Renee Feltz
KPFT Local News
419 Lovett Blvd.
Houston, TX 77006
(w/o enclosures)