



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2006

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77002

OR2006-00732

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# 240479.

The Houston Police Department (the "department") received a request for 1) information on the overtime worked by all homicide detectives since January 1, 2005 and 2) all current take-home cars, including the shop number and description of the car and identity of the employee. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Subsections (a) and (b) of section 552.301 require a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(a), (b). While you raised section 552.108 within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.136 until after the ten-business-day deadline had passed. However, this office has held that a compelling reason exists to withhold information when the information is confidential under other law or affects third party interests. *See* Open Records Decision No. 150 (1977). Because section 552.136 can constitute such a compelling reason, we will consider whether this exception applies to the submitted information.

You argue that section 552.136 is applicable to the officer's employee numbers in Exhibit 2. This exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. You state that a police officer's employee number is also used as a financial account number at the Houston Police Federal Credit Union, and advise that release of these numbers may give a person access to the officers' financial records. Based on your representation, we agree that the department must withhold the police officers' employee numbers you have marked in Exhibit 2 under section 552.136 of the Government Code.

The department claims section 552.108 for the remaining submitted information, which provides in pertinent 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;

...

(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(a), (b). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See* Gov't Code §§ 552.108(a)(1), (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that section 552.108 is generally not applicable to internal administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). Exhibit 2 consists of recent overtime slips for the department's homicide detectives, which you acknowledge are generally just administrative in nature. In this instance, you have provided arguments explaining in general how information contained in an overtime slip could interfere with the detection and investigation of crime. You have not, however, provided specific arguments explaining how release of the highlighted information would impair the respective investigations. Accordingly, we find that you have not demonstrated the applicability of section 552.108 to the highlighted information. Therefore, it must be released. *See* Open Records Decision No. 562 at 10 (1990) (governmental body has burden of explaining how and why release of information would interfere with law enforcement and crime prevention).

You also claim that Exhibit 3 is subject to section 552.108(b), which is applicable to internal records of a law enforcement agency, provided the law enforcement agency reasonably explains how and why release of the information at issue would interfere with law enforcement or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) exception 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 law enforcement efforts). 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 No. 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).

Exhibit 3 is a list of the department's take-home vehicles. You have provided arguments explaining how release of the shop numbers could impair the effectiveness of future undercover operations. Based on your arguments and our review of Exhibit 3, we find that release of the shop numbers would interfere with law enforcement. Thus, the department may withhold the listed shop numbers in Exhibit 3 under section 552.108(b). However, the remaining information consists of the make, model, and year of the department's vehicles along with the name of the officer to whom the vehicle is temporarily assigned. The information lists over 500 vehicles of various makes and models. You also inform us that these vehicles are rotated among officers depending on the needs of the department. Thus, after reviewing your arguments, we find that the department has not adequately explained how release of this information would interfere with law enforcement. Accordingly, the remaining information in Exhibit 3 must be released.

In summary, the department must withhold the police officers' employee numbers you have marked in Exhibit 2 under section 552.136 of the Government Code. The department may withhold the listed shop numbers in Exhibit 3 under section 552.108(b). 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,



José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 240479

Enc. Submitted documents

c: Steve Bivens  
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(w/o enclosures)