ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2006

Ms. YuShan Chang
Assistant City Attorney
City of Houston
Legal Department
P. O. Box 368
Houston, Texas 77001-0368

OR2006-01776

Dear Ms. Chang:

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# 243046.

The Houston Police Department (the "department") received a request for nine categories of information related to reports and policies and procedures pertaining to domestic violence incidences. You state that the department has released a portion of the requested information. You claim that the remaining requested information is 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 pertinent 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). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(b) may be 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.) To prevail on a 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. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, 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 law enforcement exception), 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). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

You assert that release of the submitted procedures regarding domestic violence investigations would "impair [the department's] ability to arrest a suspect or protect members of the public in domestic violence situations." Having considered your representations and reviewed the submitted information, we find that you have failed to explain how the information at issue differs from law enforcement procedures and techniques that are commonly known; therefore, we conclude that you have failed to meet your burden of explaining how and why release of this information would interfere with law enforcement and crime prevention. *See* Gov't Code §552.108 (a)(1), (b)(1); Open Records Decision No. 562 at 10 (1990). Consequently, we determine that the department may not withhold any of the submitted information pursuant to section 552.108. As you raise no other exceptions to disclosure for this information, you must release it 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,

Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 243046

Enc. Submitted documents

c: Ms. Caroline Bettinger-Lopez
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(w/o enclosures)