



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2007

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

OR2007-00818

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# 269752.

The Houston Police Department received a request for General Order 500-08 entitled "Required Booking Information and Hold Procedures." You claim that the 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.

We understand you to claim that the submitted information is excepted from disclosure under subsections 552.108(a)(1), (a)(2) and (b)(1). 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;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(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)(1)-(2), (b)(1). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. You have failed to establish how subsections 552.108(a)(1) and 552.108(a)(2) apply to the submitted information, therefore, none of the information may be withheld on this basis.

Next, this office has stated that under the statutory predecessor to section 552.108(b)(1), 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 Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under predecessor to section 552.108), 252 at 3 (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

You state that the submitted procedural materials contain “detailed information as to what information will be sought as part of the booking process and the procedures a prisoner will likely encounter while they are being held by police.” You further state “[s]uspects who know what identification the police are searching for would focus on the production of particular forged/fabricated documents to circumvent the hold and booking procedure that is designed to keep criminals off the street” and release of the submitted information would allow “a suspect to anticipate the types of movement he/she will be subject to, with each movement a[n] opportunity for escape or the discarding of contraband.” Upon review of your arguments and the submitted information, we find that the department has failed to demonstrate how subsection 552.108(b)(1) is applicable to any portion of the submitted information. Accordingly, we conclude that the department may not withhold any portion of the submitted information on this basis. As you raise no other exceptions to disclosure, the 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).

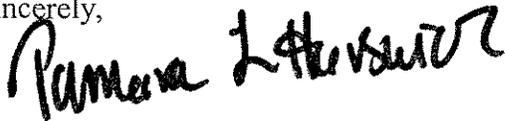
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/jww

Ref: ID# 269752

Enc. Submitted documents

c: Mr. Darin M. Dalmat
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(w/o enclosures)