



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2007

Mr. Denis C. McElroy
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-03159

Dear Mr. McElroy:

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# 274902.

The City of Fort Worth (the "city") received a request, number 1410-07, for information regarding a named individual and a specified offense report. You state that the majority of the requested information will be released to the requestor.¹ You claim that a portion of the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(b)(1) of the Government Code provides:

(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[.]

¹The city states that it is withholding certain Texas-issued motor vehicle record information pursuant to the previous determinations issued by our office in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). See Gov't Code § 552.301(a).

Gov't Code § 552.108(b)(1). Section 552.108(b)(1) protects information the public disclosure of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). A governmental body claiming section 552.108(b)(1) 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).

You state that the submitted information contains the identifying information of an officer who frequently works in an undercover capacity. You assert that releasing the identifying information of this officer would jeopardize the officer's safety and could compromise the effectiveness of future undercover operations. Based on your representations, we conclude that you have demonstrated how release of the information at issue would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 456 at 2 (1987) (statutory predecessor to section 552.108 protected information that, if revealed, might endanger life or physical safety of law enforcement personnel), 211 at 4 (1978) (statutory predecessor protected identities of members of Attorney General's Organized Crime Task Force engaged in undercover narcotics work). Thus, you may withhold the identifying information you have highlighted under section 552.108(b)(1). 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/eb

Ref: ID# 274902

Enc. Submitted documents

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