



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2008

Ms. Kristy J. Orr
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2008-02885

Dear Ms. Orr:

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# 303736.

The Houston Police Department (the "department") received a request for a specified document pertaining to the status of department death cases. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.111 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, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The department received the request for information on December 14, 2007. However, although the department requested a ruling and raised section 552.108 by the ten business day deadline, you did not raise section 552.111 of the Government Code until January 9, 2007. Therefore, we find that the department has waived its claims under section 552.111 and the requested information may not be withheld under this section. Open Records Decision Nos. 677 at 10 (2002) (section 552.111 is not compelling reason to withhold information under section 552.302), 473 (1987) (statutory predecessor to

section 552.111 may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general).

However, we will address your timely raised arguments against disclosure of the requested information. 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;

...

(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), (b)(1). You state that the submitted document is excepted from disclosure in its entirety under section 552.108(b)(1). 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(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 generally that the submitted information contains "specific guidelines as to the investigation process of homicides" and that knowledge of this information would unduly interfere with law enforcement and prosecution. However, the submitted information appears to only consist of general information compiled from the multiple offense descriptions and other generally known or administrative information; further, the department has not specifically identified any of the investigation processes to which you refer or explained how release of the submitted information would interfere with law enforcement. Therefore, the department has failed to demonstrate how subsection 552.108(b)(1) is applicable to any of the submitted information.

Next we address your argument that the comments field in the submitted document is excepted from disclosure under section 552.108(a)(1). You state that the submitted information relates to ongoing homicide investigations. This office has stated that a presumption is created as to the applicability of subsection 552.108(a)(1) if the criminal matter is pending and the records directly pertain to that matter. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). In this instance, the information at issue is an administrative document that consists of information compiled from a number of investigations; it does not pertain to any particular criminal investigation. Thus, there is no presumption that release of this information will interfere with the detection, investigation, or prosecution of crime. Because this presumption is not applicable to the present request, section 552.108 requires that you provide specific arguments to this office explaining how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. However, in this instance, you have only provided a general assertion that the comments you seek to withhold pertain to any particular pending criminal investigation. Further, we note that most of the summaries you seek to withhold consist only of basic information that cannot be withheld under section 552.108. Gov't Code § 552.108(c). Thus you have not established that section 552.108(a)(1) applies to the comments field of the submitted document. As you raise no other exception to disclosure of the submitted information, it 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

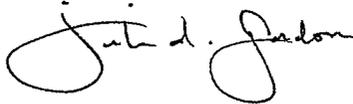
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 303736

Enc. Submitted documents

c: Mr. Mark Greenblatt
KHOU-TV
1945 Allen Parkway
Houston, Texas 77019
(w/o enclosures)

Mr. Joseph R. Larsen
Counsel to Mark Greenblatt
Ogden, Gibson, Brooks & Longoria, LLP
1900 Pennzoil South Tower
711 Louisiana
Houston, Texas 77002
(w/o enclosures)