



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2008

Ms. Sandra Gentry  
Records Supervisor  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2008-05291

Dear Ms. Gentry:

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# 308178.

The Baytown Police Department (the "department") received a request for a specified incident report. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b) of the Government Code provides, in pertinent part, as follows:

(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; [or]
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(b)(1)-(2). Section 552.108(b)(1) 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.) (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). Section 552.108(b)(2) is applicable only if the internal records in question relate to a concluded case that did not result in a conviction or a deferred adjudication.

Under the statutory predecessor to section 552.108(b), this office has stated that a governmental body may withhold certain information that would reveal law enforcement techniques. *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 exhibits pattern that reveals investigative techniques, information is excepted under predecessor of 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). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *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 not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You assert that the information at issue is an internal notation used to alert officers of possible safety issues. However, upon review of your arguments and the submitted information, we conclude you have not demonstrated how release of the information at issue would interfere with law enforcement or crime prevention. Further, you have not demonstrated that the information at issue relates to a concluded case that did not result in a conviction or deferred adjudication. Therefore, you may not withhold the information at issue under section 552.108(b)(1) or section 552.108(b)(2).

We understand you to assert that some of the submitted information is excepted under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. The department may withhold the green-highlighted social security numbers under section 552.147.<sup>1</sup> The remaining information must be released.<sup>2</sup>

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).

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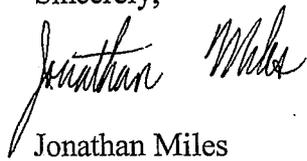
<sup>1</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

<sup>2</sup>We note that because the requestor has a special right of access to some of the submitted information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,

A handwritten signature in cursive script that reads "Jonathan Miles".

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 308178

Enc. Submitted documents

c: Ms. Jean F. Gesford  
302 Eden Drive  
Longview, Texas 75605  
(w/o enclosures)