ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2008

Ms. YuShan Chang
Ms. Evelyn W. Njuguna
Assistant City Attorneys
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2008-12754

Dear Ms. Chang and Ms. Njuguna:

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# 321814.

The Houston Police Department (the "department") received two requests for information. The first request is for all general orders and DWI task force standards of procedure for a specified time period.[1] The second request is for eight categories of information pertaining to foreign nationals and the department's policy on acceptance of the Mexican Matricula Consular card for purposes of identification. You state that the department will release the majority of the requested information to the requestors. You also state that information pertaining to the request for standards of procedure for the DWI task force units does not exist.[2] You claim that portions of the submitted general orders are excepted from disclosure

[1]You state that the commission sought and received clarification from the first requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request).

[2]We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante,* 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that Exhibit 9 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-00818 (2007). In that decision we ruled that General Order 500-08 must be released. *See* Open Records Decision No. 673 (2001) (explaining circumstances under which the first type of previous determination exists). Thus we assume that Exhibit 9, consisting of General Order 500-08, was previously released by the department. Section 552.007 of the Government Code prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. Such information "must be made available to any person," unless the information is expressly prohibited by law or confidential under law. *See* Gov't Code § 552.007(a) and (b). Since Exhibit 9 has already been released by the department and it is not otherwise confidential, it may not be withheld from disclosure.

Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is 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 police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (Gov't Code § 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). Section 552.108(b)(1) is 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). You have provided an affidavit from a department executive assistant chief in administrative operations who explains how disclosure of specified sections of the submitted general orders would provide aid and support to criminal elements in carrying out their criminal activity, avoiding detection, and hindering law enforcement investigative efforts. Based on these arguments and our review, we find that the release of portions of the specified sections of the remaining exhibits, which we have marked, would interfere with law enforcement.

Accordingly, the department may withhold the information we have marked in Exhibits 4, 5, 7, 8, 11, and 12, under section 552.108(b)(1) of the Government Code. However, the remaining information consists only of reporting procedures and other routine administrative policies and procedures of the department. Thus, we find you have failed to establish how public access to the remaining information would interfere with law enforcement or endanger police officers. Accordingly, Exhibits 2, 3, 6, and 10 and the remaining information in Exhibits 4, 5, 7, 8, 11, and 12 are not excepted from disclosure under section 552.108 and must be released.

In summary, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. 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 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). If the governmental body does not file suit over 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,

Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 321814

Enc. Submitted documents

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