



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2008

Ms. Elizabeth Garza Goins
Assistant General Counsel
Office of the General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-001

OR2008-12881

Dear Ms. Goins:

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# 322177.

The Texas Department of Public Safety (the "department") received a request for information pertaining to Operation Border Star over a particular time period including (1) the number of department officers assigned, (2) the amount of money spent, (3) a list of apprehensions and seizures, and (4) a list of the areas where the operation is focused.¹ You state that the department will release some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you inform us that a portion of the requested information is subject to a previous ruling issued by this office. On July 15, 2008 this office issued Open Records Letter

¹We note that the requestor has asked the department to answer a question. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the department has made a good faith effort to do so.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

No. 2008-09578 (2008), in which we ruled that the department may withhold portions of the submitted daily and monthly summary reports and the *Border Star Sentinel* under section 552.108(b)(1) of the Government Code. You represent that the pertinent facts and circumstances have not changed since the issuance of that prior ruling. Thus, we determine that the department may continue to rely on our ruling in Open Records Letter No. 2008-09578 as a previous determination and withhold the information at issue under section 552.108 in accordance with that decision. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). To the extent that the submitted information was not addressed in our prior ruling, we will address your claims for exception from disclosure.

Section 552.108(b)(1) of the Government Code excepts from required public disclosure “[a]n 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 [if] release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits patterns that reveal investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would interfere with law enforcement because disclosure would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (statutory predecessor was 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).

A governmental body that relies on section 552.108(b)(1) must sufficiently explain how and why the release of the information at issue 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).

In this instance, you seek to withhold portions of the submitted daily and monthly summary reports, portions of the *Border Star Sentinel*, and information revealing the personnel requirements of the department, all of which deal with the implementation of Operation Border Star. You assert that releasing portions of the daily and monthly summary reports “would place a criminal or terrorist at an advantage in avoiding or confronting law enforcement and would increase his chances of evading detection or injuring law enforcement or other persons.” Further, you state that the release of portions of the *Border Star Sentinel* would compromise “the effectiveness of law enforcement because it puts criminals or terrorists on notice as to what kind of activity to avoid.” You also state that some of the information you have marked reveals the “exact number and rank of personnel utilized for the operation under specific time periods and by operation activity location.” You argue that release of this information would compromise the “success of the enforcement activity by revealing which locations have had substantial personnel deployed to it and consequently, those that did not.” Revealing this information, you assert, would aid criminals in predicting patterns of enforcement, avoiding areas of high enforcement, and developing plans to eliminate police presence, thereby putting law enforcement lives at risk. Finally, you argue that release of the marked information would reveal law enforcement techniques and tactical plans. You state the marked information reveals the department’s “strategy for prevention and prediction of crime by revealing where, when, and how the [d]epartment allocates its personnel.” Based on your representations and our review of the submitted information, we find that the release of the information at issue would interfere with law enforcement. Accordingly, the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code.³

In summary, the department may continue to rely on Open Records Letter No. 2008-09578 as a previous determination for the information at issue in that ruling. The department may withhold the information you 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

³As our ruling is dispositive, we need not address your additional arguments against disclosure.

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).

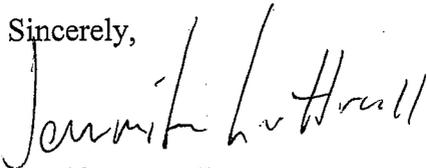
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 322177

Enc. Submitted documents

c: Ms. Melissa Del Bosque
Texas Observer
307 West 7th Street
Austin, Texas 78701
(w/o enclosures)