



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2008

Ms. Jennifer F. Callan
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2008-16018

Dear Ms. Callan:

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# 328348.

The City of El Paso Police Department (the "department") received a request for "training manuals, educational materials, and procedural documents provided to officers in the [d]epartment, specifically relating to interview/interrogation techniques and trainings . . . from 1980 to 1986." You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains documents pertaining to an in-service training dated 1989. The requestor has limited the request to information "from 1980 to 1986." Thus, the 1989 information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we note that the submitted responsive information consists of interviewing and interrogation techniques from a 1982 in-service training. To the extent any other responsive information existed on the date the department received the request for information, we assume the department has released that information to the requestor. If that information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302;

see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

The department seeks to withhold the training materials under section 552.108(b)(1) of the Government Code, which excepts from 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.” This section 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department’s use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). To claim this aspect of section 552.108 protection, however, 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). Further, commonly known policies and techniques may not be withheld under section 552.108. *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 are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency 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 state that the responsive information pertains “to the way the [d]epartment handles interviews and interrogations.” You assert that release of the information, “as well as the method and time the department’s officers apply this training would be detrimental” to department investigations, and that “armed with the information found in the submitted document[s], members of the general public could gain knowledge of the tactics used by the department’s officer[s] when questioning an individual pursuant to an investigation.” You further claim that “disclosure of this knowledge to the general public would enable individuals to anticipate the procedures followed by the department’s officers and possibly thwart the tactics used by officers in an attempt to elicit responses from those being questioned during the investigatory process.”

After reviewing the information at issue and your arguments and representations, we agree that the release of some of the submitted information would interfere with law enforcement.

Thus, the department may withhold this information, which we have marked, under section 552.108(b)(1). However, we find the department has not established that release of the remaining information would interfere with law enforcement; therefore, the department must release the remaining information 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). 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,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 328348

Enc. Submitted documents

c: Requestor
(w/o enclosures)