



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2009

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-05998

Dear Ms. Chang:

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# 341873.

The Houston Police Department (the "department") received a request for (1) the directives and operational procedures of the Office of the Inspector General (the "OIG"); (2) information relating to persons assigned to the OIG; and (3) communications, opinions, and policies relating to a named employee of the City of Houston. You inform us that the city has no responsive information relating to the named employee.¹ You state that responsive information relating to persons assigned to the OIG either has been or will be released. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹We 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 dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Although you also raise sections 552.101, 552.103, 552.107, 552.111, 552.119, 552.130, and 552.147 of the Government Code, you have provided no arguments in support of the applicability of those exceptions. Accordingly, this decision does not address the other exceptions you raise. *See Gov't Code* § 552.301(a)(1)(A) (governmental body must submit written comments stating why claimed exceptions apply).

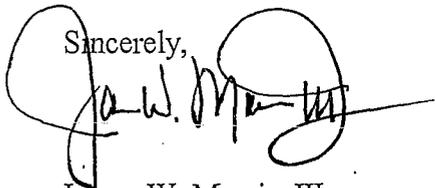
Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 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). 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) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable 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 explain that the submitted information consists of the OIG’s Standard Operating Procedures. You contend, and have provided an affidavit in which a representative of the department asserts, that section 552.108(b)(1) is applicable to all of the submitted information. In the alternative, the affiant contends that specified portions of the information fall within the scope of section 552.108(b)(1). The affiant argues that release of any of the submitted information would adversely affect the OIG’s ability to conduct investigations, potentially endanger the safety of investigators, and otherwise interfere with law enforcement and crime prevention. He believes that disclosure of the OIG’s procedures “would allow suspects to avoid detection or apprehension and the consequences of their misconduct or criminal activity as well as pose a risk to the safety of the public and that of the investigating officers.” On review of the submitted information, we note that much of the information is concerned with administrative, personnel, procedural, and other routine matters. Nevertheless, having considered your representations and those of the affiant, we have marked information that the department may withhold under section 552.108(b)(1). We find that neither you nor the affiant have adequately demonstrated that release of any of the remaining information will interfere with law enforcement or crime prevention. We therefore conclude that the remaining information may not be withheld under section 552.108(b)(1) and must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 341873

Enc: Submitted documents

c: Requestor
(w/o enclosures)