



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2009

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2009-11501

Dear Mr. Mann:

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# 352516 (City of Garland ID# GCA09-0436).

The Garland Police Department (the "department") received a request for e-mails sent by a named department employee during a specified period of time. You state you have released some of the responsive information. You claim some of the submitted information is not subject to the Act. You also claim a portion of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your contention that the e-mails you have marked are not public information subject to the Act. The Act is only applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987).

You assert the e-mails you have marked are personal communications not created or maintained in the course of department business. Upon review of your arguments and the information at issue, we agree the e-mails you have marked are purely personal, and thus do not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the department. See Gov't Code § 552.021; see also Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources). Thus, we conclude these e-mails are not subject to the Act. Therefore, the department need not release the e-mails you have marked under the Act.

You assert a portion of the remaining submitted information is excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) of the Government Code provides:

(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[.]

Gov't Code § 552.108(b)(1). 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. Corryn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of section 552.108, 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 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 (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 at 2 (1987) (release of forms containing information regarding when and where off-duty police officers will be working would unduly interfere with law enforcement), 252 (1980) (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).

You contend the information you have marked is excepted by section 552.108(b)(1). You state this information is a building pass code. You argue release of this information would compromise the security of the police officers and civilians who work in the building. Further, you argue that if the code were to become available to offenders, it could jeopardize

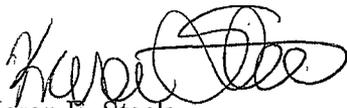
current and future operations of the department. Based on your representations and our review, we conclude the department has demonstrated the release of the information it has marked would interfere with law enforcement and crime prevention. Thus, the department may withhold the information it has marked under section 552.108(b)(1).

In summary, the e-mails you have marked are not subject to the Act and need not be released in response to this request. The code you have marked within the remaining submitted information may be withheld under section 552.108(b)(1) of the Government Code. The remaining submitted information must be released.

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,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 352516

Enc. Submitted documents

c: Requestor
(w/o enclosures)