



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 15, 2009

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200, P.O. Box 1065
Arlington, Texas 76004-1065

OR2009-11627A

Dear Mr. Reinwand:

This office issued Open Records Letter No. 2009-11627 (2009) on August 19, 2009. We have examined this ruling and determined that Open Records Letter No. 2009-11627 is incorrect. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2009-11627. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 360722 (Arlington Police Department Reference No. 2009-06-038).

The Arlington Police Department (the "department") received a request for information pertaining to two named officers, including the days and hours worked by each officer and specifics concerning citations issued by each officer during a specified time period. You claim that some of the requested information is not subject to the Act. You claim that 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 note that you have only made arguments and submitted information pertaining to one of the named officers. Thus, to the extent any information responsive to the request for information pertaining to the other named officer existed on the date the department received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so 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).

Next, we address the department's assertion that some of the requested documents are records of the judiciary and therefore not subject to the Act. The Act generally requires the disclosure of information maintained by a "governmental body," but the judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). You state that the requested citations are "delivered to and maintained by the City of Arlington Municipal Court." Based on this representation, we agree that the requested citations are records of the judiciary and are not subject to disclosure under the Act.

Next, the department claims that the submitted information, which consists of time card records and a record indicating call types by the named officer, are excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) 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). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *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). 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. 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 252 (1980) (predecessor to section 552.108 is designed to protect investigative techniques and procedures used in law enforcement). However, in order for a governmental body to claim this exception to disclosure, it must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* ORD 562 at 10. Whether disclosure of particular records will interfere with law enforcement or prosecution must be decided on a case-by-case basis. *See* Attorney General Opinion MW-381 (1981).

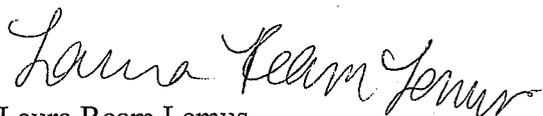
You claim the submitted information reveals the officer's schedule and release would therefore "allow criminals and others to adjust the time and/or location of illegal activities accordingly and jeopardize public safety and overall law enforcement [and] would also help such persons identify times when police protection is reduced." Based on your arguments and our review of the submitted information, we agree that the department may withhold the

submitted time card records under section 552.108(b)(1) of the Government Code. However, we find the record indicating call types by the named officer does not reveal the times the officer was at any particular location, nor does it reveal times when police protection is reduced. Accordingly, we find that the department has failed to explain in any detail how release of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the submitted record indicating call types is not excepted from public disclosure under section 552.108(b)(1) of the Government Code. As you raise no additional exceptions against the disclosure of the record indicating call types, it 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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 360722

Enc. Submitted documents

c: Requestor
(w/o enclosures)