ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2009

Ms. Carrie Parsons
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2009-13007

Dear Ms. Parsons:

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# 355852 (ORA #09-1323).

The Texas Department of Public Safety (the "department") and the department's Governor's Division of Emergency Management ("GDEM") both received an identical request from the same requestor for seven categories of information pertaining to the activities of the Border Security Operation Center ("BSOC") and the Joint Operations Intelligence Centers ("JOICs") in relation to "Operation Border Star," including specified information concerning law enforcement and non-law enforcement involvement that is contained in "dissemination lists produced by the BSOC or any of the JOICs." You state that the department and the GDEM do not have information responsive to categories four through seven of the requests.[1] You claim that the submitted distribution lists for Operation Border Star are not responsive to the request, or, in the alternative, are excepted from disclosure under sections 552.101, 552.108, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You argue that the submitted information is not responsive to the requests, but "in [GDEM's] good faith attempt to relate the request to existing records and in an abundance of caution, GDEM is forwarding [the submitted documents] for determination of responsiveness." As you acknowledge, a governmental body must make a good faith effort to relate a request to information that is within the governmental body's possession or control. *See* Open Records

[1]The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Decision No. 561 at 8-9 (1990). We note that the requestor's representative states that the requestor now "limit[s] our request to the distribution list for Operation Border Star." As you have identified and submitted the distribution lists and the requestor considers them to be responsive, we will determine whether you must release this information to the requestor.

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.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

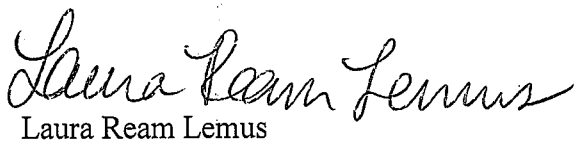
A governmental body that relies on section 552.108(b)(1) must sufficiently explain how and why the release of the information at issue would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex.App.—Austin 2002, no pet.) (section 552.108(b)(1) 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. In this instance, you seek to withhold the submitted distribution lists for Operation Border Star, which you state were "assembled and [are] maintained by the GDEM to prevent and detect terrorism and related criminal activity." The distribution lists consist of the names, agencies, and e-mail addresses of representatives from the different law enforcement agencies participating in Operation Border Star through GDEM. You state that these lists reveal individuals in a homeland security network and are used for sharing information on crime and for making operational decisions with regard to border security. You assert that, if these distribution lists were released, "transnational gangs and cartels could not only pinpoint perceived strengths and vulnerabilities of [the Operation Border Star] network to their tactical advantage, but could also target identified individuals and their families." Further, you state that the release of the distribution lists would interfere

with the detection of crime by "revealing tactics in the struggle against border violence, jeopardizing individual links in the border security chain, and thereby subjecting life and property to harm." Based upon your representations and our review, we find that the release of the submitted distribution lists would interfere with law enforcement. Accordingly, the submitted information may be withheld under section 552.108(b)(1) of the Government Code.[2]

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# 355852

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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