



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2009

Ms. Sarah W. Langlois
McGinnis, Lochridge & Kilgore, L.L.P.
Attorney for Spring Branch Independent School District
3200 One Houston Center
1221 McKinney Street
Houston, Texas 77010

OR2009-13198

Dear Ms. Langlois:

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# 355662.

The Spring Branch Independent School District (the "district"), which you represent, received a request for: (1) the district police department's "operations manual, general orders manual, or handbook"; (2) information pertaining to incidents involving the use of force by district police officers; (3) information pertaining to tickets issued to students by district police officers; (4) information pertaining to students arrested by district police officers; (5) information pertaining to the number of employees in the district's police department; and (6) information pertaining to the finances of the district's police department. You state the district does not possess any information responsive to portions of the request.¹ You further state you released some of the responsive information to the requestor. You claim that some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Further, you explain the submitted information may implicate the interests of the Hedwig Village Police Department (the "department"). Accordingly, you have notified the department of its right to submit arguments to this office as to why the

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received or to create information in response to a request. 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), 563 at 8 (1990), 555 at 1-2 (1990).

requested information should not be released.² *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). Also, we have received comments from the requestor and two other interested parties. *See id.* We have considered all of the submitted comments and arguments, and we have reviewed the submitted information.

Initially, you inform us that the district requested clarification regarding categories two, three, and four of the request.³ You do not state that the district has received a response as of the date of its request for this decision. Accordingly, if the district has not received a response to its request for clarification, then the district has no obligation at this time to release any information that might be responsive to this portion of the request. But if the district receives clarification and wishes to withhold any of the information encompassed by the clarified request, then you must request another decision. *See id.* §§ 552.006, .301(a), .302.

Next, we note you have not submitted any information responsive to categories five and six of the request. Therefore, to the extent this information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See id.* §§ 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).

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 also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, 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 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. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143

²As of the date of this decision, this office has received no correspondence from the department.

³*See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

(1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 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). You indicate that release of the portions of the submitted information you have marked would interfere with law enforcement duties and endanger police officers. Based on your arguments and our review of the information at issue, we find that the release of portions of the information you have marked would interfere with law enforcement. However, we find you have failed to demonstrate how release of the remaining information you have marked would interfere with law enforcement or crime prevention. Accordingly, we conclude that with the exception of the information we have marked for release, the district may withhold the remaining information you have marked under section 552.108(b)(1) of the Government Code. The remaining 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, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/dls

Ref: ID#355662

Enc. Submitted documents

c: Requestor
(w/o enclosures)