



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2009

Ms. Dianne O. Florez
Reeves County Clerk
Reeves County
P.O. Box 867
Pecos, Texas 79772

OR2009-13925

Dear Ms. Florez:

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# 357151.

The Reeves County Clerk (the "county clerk") received a request for twenty categories of information concerning contracts and other agreements regarding the detention of individuals by Reeves County on behalf of the federal government and concerning conditions at the Reeves County Detention Center (the "center") generally. You state that some of the requested information will be made available to the requestor. You state that you are not the custodian of public records for the center. You claim that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.²

¹ You state the county clerk sought and received clarification of the information requested from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request).

² We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, you inform our office that the county clerk is not the custodian of records for the center. Instead, you state that a portion of the requested information is maintained by the center itself. Section 552.201(b) of the Government Code provides that “[e]ach elected county officer is the officer for public information and the custodian, as defined by Section 201.003, Local Government Code, of the information created or received by that county officer’s office.” Gov’t Code § 552.201(b). You represent that the proper custodian of a portion of the requested information is the center. Based on your representations, we conclude that because the county clerk does not maintain portions of the requested information and is not the proper custodian of such information, the Act does not require the county clerk to respond to those portions of the request. This ruling only addresses the information that the county clerk maintains.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. 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.” *See City of Ft. 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 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (Gov’t Code § 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). Section 552.108(b)(1) is 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).

You state, and have provided supporting affidavits from the wardens of the detention centers that confirm, that the information you have marked under this exception concerns the security measures and staffing at the center, including information regarding fencing, lighting, alarm systems, and other electronic measures. You argue, as do the wardens in the submitted affidavits, that release of the marked information would jeopardize security at the detention center. Having considered your arguments and the information at issue, we conclude you have demonstrated how release of the information you have marked would interfere with law enforcement and crime prevention. Accordingly, the county clerk may

withhold the 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 357151

Enc. Submitted documents

c: Requestor
(w/o enclosures)