



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2009

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2009-14583

Dear Ms. Grace:

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# 357242 (TM# 45267).

The Austin Police Department (the "department") received a request for the model year of each take home vehicle, as well as the first name, home city, and assignment location of department personnel assigned take home vehicles. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

First, the department seeks to withhold the officers' home cities. Section 552.117(a)(2) of the Government Code excepts from disclosure information relating to the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer requested confidentiality under section 552.024 or section 552.1175 of the

¹We 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.

Government Code.² See Gov't Code § 552.117(a)(2). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2).³

Next, you argue release of the remaining information would endanger the lives of peace officers because it would aid gang members, drug traffickers, and other criminals' in conducting surveillance of law enforcement personnel and facilities. The Eighty-first Legislature recently enacted section 552.151 of the Government Code, which relates to a public employee's or officer's safety. This section provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.151. You have provided a memorandum from the department which states that release of the information at issue would make it easier for criminals to track, follow, or compromise an officer, an officer's family, and/or an investigation. Based on your representations and our review, we find the department has only demonstrated that release of undercover officers' names would subject the officers to a substantial threat of physical harm. Therefore, to the extent any of the officers at issue are undercover officers, these officers' first names must be withheld under section 552.151. To the extent any of the officers at issue are not undercover officers, their first names may not be withheld under section 552.151. However, we find the department has not adequately demonstrated that release of any portion of the remaining information would subject officers to a substantial threat of physical harm. Accordingly, the department may not withhold any of the remaining information at issue under section 552.151 of the Government Code.

Lastly, we consider the department's section 552.108(b)(1) assertion for the remaining information. 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: (1) release of the internal record or notation would interfere with law enforcement or prosecution." 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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³As our ruling for this information is dispositive, we need not address your arguments against its disclosure.

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, 327 (Tex. App.—Austin 2002, no pet.).

To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

In this instance, you explain that release of the remaining information at issue would likely cause officers assigned take home vehicles to face a substantial threat of physical harm for the reasons stated above. Based on your representations, we conclude that release of the officers’ assignment locations, which we have marked, would interfere with law enforcement and crime prevention. Therefore, the department may withhold this information under section 552.108(b)(1) of the Government Code. However, you inform this office that you have previously released each officer’s last name, rank, round trip mileage from work to home, vehicle type, and model to the requestor in response to a previous request. Upon review, we find you have failed to demonstrate how release of the non-undercover officers’ first names and the model years of the department’s vehicles would interfere with law enforcement or crime prevention. Therefore, the department may not withhold the non-undercover officers’ first names or the model years under section 552.108(b)(1).

In summary, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent any of the officers at issue are undercover officers, these officers’ first names must be withheld under section 552.151 of the Government Code. The department may withhold the information we 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 357242

Enc. Submitted documents

cc: Requestor
(w/o enclosures)