



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2009

Ms. Evelyn W. Njuguna  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-14601

Dear Ms. Njuguna:

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# 358398.

The Houston Police Department (the "department") received a request for all information regarding the 2009 national level security training exercise ("NLE 09"). You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. In addition, you assert that release of some of the requested information may implicate the interests of the United States Department of Homeland Security/Federal Emergency Management Agency ("DHS/FEMA"). Accordingly, you state you notified DHS/FEMA of this request for information and of its right to submit arguments to this office as to why its information should not be released. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from DHS/FEMA. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we address DHS/FEMA's contention that the submitted training materials are not public information subject to the Act. The Act applies to "public information," which is defined under section 552.002 of the Government Code as:

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a); *see also id.* § 552.021. Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body, or is used by a public official or employee in the performance of official duties. DHS/FEMA argues the department does not own the submitted training materials because ownership of the training materials lies expressly with DHS/FEMA and, thus, the training materials are not public information. We note, however, that all of the submitted information was provided to the department by DHS/FEMA, and is maintained by the department, in relation to the department's participation in the training exercise at issue. Therefore, we conclude the submitted training materials relate to the official business of the department and, therefore, the information constitutes "public information." *See id.* § 552.002(a). Accordingly, the department may only withhold this information if it is excepted from disclosure pursuant to a provision of the Act. Thus, we will consider the remaining submitted arguments against disclosure.

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 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).

You inform us that the requested security training exercise materials were provided to the department by DHS/FEMA for the purpose of participating in NLE 09. You have provided an affidavit from a lieutenant in the department who explains that releasing the information at issue would allow a terrorist to evaluate the capabilities of law enforcement agencies, identify the types of scenarios and characteristics law enforcement agencies look for when detecting terrorists, and know tactics used by law enforcement in responding to and preventing terrorist acts. The lieutenant further explains that "such knowledge would allow the terrorist to anticipate the actions and techniques of law enforcement and thus give such perpetrators the ability to make better planned attacks and initiate countermeasures to avoid detection or thwart investigation by law enforcement." Based upon these representations and our review, we find that the release of the requested security training exercise materials would interfere with law enforcement. Accordingly, the department may withhold the requested security training exercise materials under section 552.108(b)(1) of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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](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/dls

Ref: ID# 358398

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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