



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-00763

Dear Ms. De La Garza:

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# 365806.

The Houston Police Department (the "department") received a request for all information, including several specified categories of information, pertaining to suspicious activity reporting. You state the department will provide some of the requested information to the requestor. You claim the submitted suspicious activity reporting ("SAR") document is excepted from disclosure under section 552.108 of the Government Code. In addition, you assert release of the submitted memorandum of understanding ("MOU") may implicate the interests of the United States Department of Justice, Federal Bureau of Investigation (the "FBI"). Accordingly, you state you notified the FBI of this request for information and of its right to submit arguments to this office as to why the submitted MOU 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 the FBI. We have considered the submitted arguments and reviewed the submitted 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 officer safety, and

generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Corryn*, 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 the submitted SAR document pertains to gathering, developing, and sharing criminal intelligence information regarding capabilities, intentions, and actions of criminal or terrorist groups and individuals. You have provided an affidavit from a lieutenant in the department who explains releasing the SAR document would allow a criminal or terrorist to “anticipate the events, locations and activities that would bring [law enforcement] scrutiny or investigation.” The lieutenant further explains that such knowledge would allow the criminal or terrorist to be better able to avoid detention. Based upon these representations and our review, we find the release of the submitted SAR document would interfere with law enforcement. Accordingly, the department may withhold this information under section 552.108(b)(1) of the Government Code.

The FBI asserts it maintains exclusive ownership of the submitted MOU and, as such, the MOU is excepted under section 552.101 in conjunction with the federal Freedom of Information Act (“FOIA”), chapter 552 of the United States Code. In Attorney General Opinion MW-95 (1979), this office determined FOIA does not apply to records held by a Texas agency or its political subdivisions. Furthermore, this office has stated in numerous opinions information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential under one of FOIA’s exceptions. *See* Open Records Decision Nos. 496 at 4 (1988), 124 at 1 (1976). However, if a federal agency shares its information with a Texas governmental agency, the Texas agency must withhold the information the federal agency determines to be confidential under federal law. *See* Open Records Decision No. 561 at 6-7 (1990); *accord United States v. Napper*, 887 F.2d 1528, 1530 (11th Cir. 1989) (finding documents FBI lent to city police department remained property of FBI and were subject to any restrictions on dissemination of FBI-placed documents). In this instance, the MOU is an executed contract between the FBI and the department, and is maintained by the department in relation to the department’s participation in the FBI’s Joint Terrorism Task

Force. Therefore, we conclude the submitted MOU was not simply shared with the department by the FBI, but rather the MOU is maintained by the department in relation to the official business of the department. *See* Gov't Code § 552.002(a). Consequently, the submitted MOU may not be withheld under FOIA.

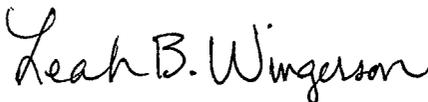
The FBI also generally asserts the submitted MOU is excepted under section 552.101 in conjunction with federal law. However, beyond its arguments regarding FOIA, the FBI has not directed our attention to any federal law, nor are we aware of any federal law, that makes the MOU confidential. Therefore, the MOU may not be withheld under section 552.101 of the Government Code. As no other exceptions to disclosure have been claimed, the submitted MOU must be released.

In summary, the department may withhold the submitted SAR document 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/rl

Ref: ID# 365806

Enc. Submitted documents

c: Requestor
(w/o enclosures)