



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2010

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

OR2010-10782

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# 387169.

The Houston Police Department (the "department") received a request for revisions of the standard operating procedures of the vice division (the "division") made since January 1, 2002, including procedure number 200/1.06. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted. We also have considered the comments we received from the requestor. *See Gov't Code* § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

We first note that some of the requested information appears to be the subject of a previous open records letter ruling. In connection with requests by this and two other requestors for standard operating procedures pertaining to the division and vice-related investigations, this office issued Open Records Letter No. 2008-12895 (2008). In that ruling, we concluded that the department may withhold specified sections of the division's standard operating procedures under section 552.108(b)(1) of the Government Code. There is no indication of any change in the law, facts, and circumstances on which the previous ruling is based. Therefore, to the extent that Open Records Letter No. 2008-12895 encompasses the information that is responsive to the instant request, the department must dispose of any such information in accordance with the previous ruling. *See Gov't Code* § 552.301(a); Open

Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Next, we address the requestor's comments. He states, among other things, that he made previous requests to the department for the division's general orders and operating procedures, as a result of which this office issued Open Records Letter Nos. 2008-12895 and 2008-08554 (2008).<sup>1</sup> The requestor appears to contend that his previous requests encompassed the submitted information. We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to comply with a standing request to provide information on a periodic basis. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 476 at 1 (1987), 452 at 3 (1986). In this instance, the information at issue consists of procedure number 200/1.06, whose date of issuance is February 2, 2010. The department has submitted an affidavit in which a lieutenant of the division states that the inclusion of procedure number 200/1.06 was the only change in the division's operating procedures since the previous requests that resulted in the issuance of Open Records Letter Nos. 2008-08554 and 2008-12895. Thus, the submitted information did not exist when the department received the requestor's previous requests, the information at issue was not encompassed by those requests or by our previous rulings, and the department was not required to release the submitted information in response to the previous requests.

The requestor also argues that the department has waived its claim under section 552.108 of the Government Code for the submitted information, because vice officers have testified in open court regarding the division's operating procedures. We note that the Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108).

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<sup>1</sup>We note that Open Records Letter No. 2008-08554 was issued as a result of a request for general orders or other written regulations governing the division or vice-related investigations. We concluded that the information was related to a pending prosecution and could be withheld under section 552.103 of the Government Code.

We find that testimony in court proceedings concerning the division's operating procedures does not constitute a voluntary disclosure of such procedures under the Act, for the purposes of a selective disclosure analysis. We therefore conclude that the department has not waived its claim under section 552.108(b)(1) of the Government Code for procedure number 200/1.06 on the basis of selective disclosure under section 552.007. We note, however, that section 552.108(b)(1), which the department claims, does not protect generally known policies and procedures from public disclosure. See Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). Although the requestor generally contends that the division's operating procedures, including procedure number 200/1.06, have been the subject of testimony by vice officers in court proceedings, the requestor has provided no evidence that any of the specific information at issue, *i.e.*, procedure number 200/1.06, has been revealed in open court. Accordingly, we will determine whether the information at issue is excepted from disclosure under section 552.108(b)(1).

Section 552.108(b)(1) 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). 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 pet.). A governmental body claiming section 552.108(b)(1) must explain how and why release of the information at issue would interfere with law enforcement and crime prevention. See Open Records Decision No. 562 at 10 (1990). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. See, *e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution).

The department contends that the release of procedure number 200/1.06 "would impair law enforcement investigations by allowing suspects to know the tactics, techniques, and procedures that undercover officers use in an undercover sting operation." The affidavit submitted by the department asserts, among other things, that release of the information at issue "would impair law enforcement investigations, allow suspects to avoid detection or apprehension and risk the safety of undercover officers." Based on the department's representations and affidavit and our review of the information at issue, we conclude that the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. We find that the department has not demonstrated that release of the

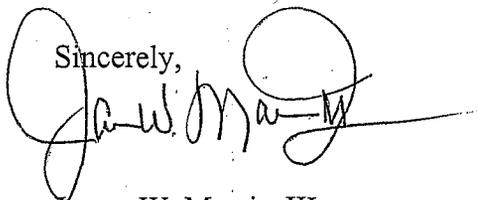
remaining information at issue would interfere with law enforcement or crime prevention. Therefore, the remaining information may not be withheld under section 552.108(b)(1).

In summary: (1) to the extent that Open Records Letter No. 2008-12895 encompasses the information that is responsive to the instant request, the department must dispose of any such information in accordance with the previous ruling; and (2) the department may withhold the information we have marked in procedure number 200/1.06 under section 552.108(b)(1) of the Government Code. The rest of the submitted 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](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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 387169

Enc: Submitted documents

c: Requestor  
(w/o enclosures)