



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2010

Mr. Ricardo J. Navarro
Mr. Alan T. Ozuna
Denton, Navarro, Rocha & Bernal
701 East Harrison, Suite 100
Harlingen, Texas 78550-9151

OR2010-12943

Dear Mr. Navarro and Mr. Ozuna:

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# 391514.

The City of Weslaco (the "city"), which you represent, received a request for all city police department overtime expenses for a specified time period, including the reasons for the overtime, the names of the officers incurring the overtime, and who authorized the expenses, and a dispatch log showing police calls for service or dispatches outside the city limits during the same time period. You state you have released the dispatch log to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.151 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a

¹As you do not submit any arguments for the additional exceptions to disclosure you raised in your letter dated June 21, 2010, we assume you have withdrawn your claims under those exceptions.

²We 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 that those records contain substantially different types of information than that submitted to this office.

governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the information at issue consists of administrative records held by the city. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a representation from the entity with the law enforcement interest (1) stating that entity wishes to withhold the information, and (2) demonstrating the information relates to the pending case. You provide an affidavit from the chief of the Weslaco Police Department (the "department") objecting to release of the submitted information. In his affidavit, the police chief states the requested information relates to ongoing narcotics cases and reveals information critical to these investigations. The police chief further states disclosure of such information would interfere with the investigation and prosecution of these currently pending criminal cases. Based on these representations and our review, we determine the release of the portions of the DEA HIDTA Task Force Overtime/Comp-Time Request forms indicating the case number/description of the assignment and the portions of the City of Weslaco Overtime Report forms indicating the nature of the work would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct). Therefore, the city may withhold the types of information we have marked under section 552.108(a)(1) of the Government Code. However, the remaining information consists of the names and employee numbers of officers working overtime and the dates and hours worked, including overtime. We find you have failed to demonstrate the release of the remaining information would interfere with the detection, investigation, or prosecution of crime for purposes of subsection 552.108(a)(1), and it may not be withheld on that basis.

Section 552.151 of the Government Code provides in part:

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 inform us, and the police chief states in his affidavit, the identification of the undercover officers, together with the other information at issue, "would give easy access to anyone intending to harm the officers or hinder our efforts," thereby endangering the lives of the officers and confidential informants. Based on these representations and our review, we find the city has demonstrated release of the identities of the undercover police officers would subject the officers to a substantial threat of physical

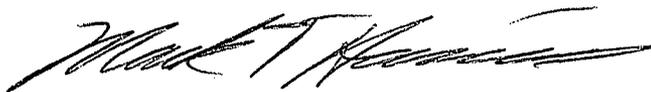
harm. Therefore, the city must withhold the names and employee numbers of the undercover police officers, which we have indicated, under section 552.151 of the Government Code. However, we find you have failed to demonstrate how release of the remaining information would subject the officers at issue to a substantial threat of physical harm. Accordingly, the city may not withhold any of the remaining information under section 552.151 of the Government Code.

In summary, the city may withhold the portions of the DEA HIDTA Task Force Overtime/Comp Time Request forms indicating the case number/description of the assignment and the portions of the City of Weslaco Overtime Report forms indicating the nature of the work, which we have indicated, under section 552.108(a)(1) of the Government Code. The city must withhold the names and employee numbers of the undercover police officers, which we have indicated, under section 552.151 of the Government Code. As you raise no further exceptions to disclosure of the remaining information, it must be released to the requestor.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 391514

Enc. Submitted documents

c: Requestor
(w/o enclosures)