



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 1, 2010

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

OR2010-13333

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# 392290.

The Houston Police Department (the "department") received a request for (1) the name and address of the custodian of records of seizures of drugs and money involving narcotics dogs; (2) canine office activity reports for a specified time interval and a guide to reading the reports; and (3) five categories of information relating to a named drug dog. You state that the department has no information responsive to items four, six, and eight of the request.¹ You also state that information responsive to items one, two, three, and five of the request either has been or will be released. You claim that the submitted information responsive to part seven of the request is excepted from disclosure under section 552.108 of the Government Code. You also believe that this information may implicate the proprietary interests of third parties. You state that the third parties concerned were notified of this request for information and of their right to submit arguments to this office as to why the

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

information should not be released.² We have considered the exception you claim and reviewed the information you submitted.

We first note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from any third party with regard to the department's request for this decision. Therefore, because no third party has demonstrated that any of the information at issue is proprietary for the purposes of the Act, the department may not withhold any of the submitted information on the basis of any interest that any third party may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address the department's claim under section 552.108 of the Government Code. 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, but was not applicable to generally known policies and procedures. *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); *but see* Open Records Decision Nos. 531 at 2-3 (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).

You claim section 552.108(b)(1) for a "supervisor training manual." You contend, and have provided an affidavit in which a sergeant of the department's narcotics division asserts, that section 552.108(b)(1) is applicable to all of the information in the manual. The affidavit states that the manual contains detailed information relating to law enforcement tactics that

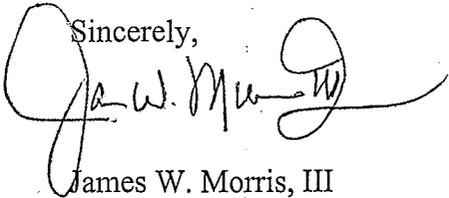
²*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

could be used by offenders to avoid detection and hinder investigations involving the use of police dogs. The affidavit asserts that release of the manual would not only negatively affect the department's ability to investigate and prosecute crimes but also endanger officers tasked with handling police dogs. The affidavit also identifies specified portions of the manual that contain "the most tactically and police[-]sensitive information." Based on your representations, the department's affidavit, and our review of the information at issue, we find that release of the information we have marked would interfere with law enforcement and crime prevention. We therefore conclude that the department may withhold the marked information under section 552.108(b)(1) of the Government Code. We find that the department has not demonstrated that section 552.108(b)(1) is applicable to any of the remaining information at issue. *See* ORD 531 at 2-3, 252 at 3. We therefore conclude that the department may not withhold any of the remaining information under section 552.108 of the Government Code. As the department claims no other exception to disclosure, 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,



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

JWM/em

Ref: ID# 392290

Enc: Submitted documents

c: Requestor
(w/o enclosures)