



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2011

Ms. Tamma Willis
Records Division
McLennan County Sheriff's Office
901 Washington Avenue
Waco, Texas 76701

OR2011-09794

Dear Ms. Willis:

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# 423312.

The McLennan County Sheriff's Office (the "sheriff") received a request for (1) the sheriff's policies on pursuits and the technique known as "cold trailing"; and (2) all radio traffic between the sheriff's deputy cars, unmarked cars, the McLennan County helicopter, and the Waco Police Department during a specified time period on a specified date. 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 submitted information.

Initially, we note you did not submit information pertaining to the technique known as "cold trailing." To the extent information responsive to that portion of the request existed on the date the sheriff received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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). A governmental

body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the audio recordings submitted as Exhibit C relate to an ongoing criminal investigation and that release of this information 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on your representations and our review, we find the sheriff may withhold Exhibit C under section 552.108(a)(1) of the Government Code.

You claim section 552.108(b)(1) of the Government Code is applicable to Exhibit B. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). 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.) To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). You state the information in Exhibit B consists of the sheriff's pursuit driving policies. You state release of this information would give an advantage to criminal suspects attempting to evade arrest and provide a blueprint for a suspect to follow in order to force officers to disengage. Upon review, we find release of the information we have marked would interfere with law enforcement and crime prevention. Accordingly, the sheriff may withhold the information we have marked under section 552.108(b)(1). However, we find the sheriff has failed to demonstrate that release of the remaining information would interfere with law enforcement and crime prevention. Thus, this information may not be withheld under section 552.108(b)(1).

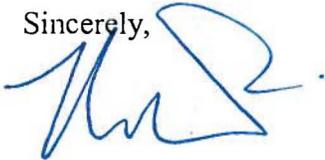
In summary, the sheriff may withhold Exhibit C under section 552.108(a)(1) of the Government Code and the information we have marked in Exhibit B under

section 552.108(b)(1) of the Government Code. The remaining information in Exhibit B 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 423312

Enc. Submitted documents

cc: Requestor
(w/o enclosures)