



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2011

Ms. Tiffany Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-15740

Dear Ms. Evans:

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# 434270 (GC No. 18822).

The Houston Police Department (the “department”) received a request for all information evidencing which police officers were assigned to work a protest, rally, or street demonstration near Westboro Baptist Church in Houston, Texas during a specified time period.¹ You claim 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.

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 . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte*

¹We note the department sought and received clarification from the requestor regarding the request. *See* Gov’t Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Pruitt, 551 S.W.2d 706, 710 (Tex. 1977)). 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. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). 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 section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 at 2 (1987) (release of forms containing information regarding when and where off-duty police officers will be working would unduly interfere with law enforcement), 252 (1980) (section 552.108 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).

In this instance, you state release of the submitted information, which reveals the names and number of officers scheduled for a particular shift and their assigned locations, would interfere with the prevention and investigation of criminal activity by revealing the department’s techniques, staffing methods, and deployment tactics, which would compromise future operations and investigations. You also provide an affidavit from a lieutenant in the department’s Special Operations Division representing release of the submitted information would severely impair law enforcement efforts and risk the safety of police officers, visiting dignitaries, and the public at large by revealing the department’s law enforcement techniques, staffing methods, and deployment tactics used in the preparation and execution of crowd control measures and security for special events. The affidavit also states release of staffing methods and deployment tactics would allow criminals to better anticipate police actions to avoid detection by law enforcement. Based on your arguments and our review of the information at issue, we find release of the information in Exhibits 2 and 2a, as well as the information we have marked in Exhibits 2b and 2c, would interfere with law enforcement. Accordingly, the department may withhold Exhibits 2 and 2a, and the information we have marked in Exhibits 2b and 2c under section 552.108(b)(1) of the Government Code. However, we find the department has not established how release of the remaining information in Exhibits 2b and 2c would interfere with law enforcement; therefore, the department may not withhold the remaining information under section 552.108(b)(1). As you raise no other argument against 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,

A handwritten signature in cursive script that reads "Kirsten Brew".

Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 434270

Enc. Submitted documents

c: Requestor
(w/o enclosures)