



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 7, 2011

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

OR2011-16356

Dear Ms. Chang:

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# 435433 (GC No. 18905).

The Houston Police Department (the "department") received a request for the policies, general orders and guidelines related to: (1) the use of confidential informants in narcotics investigations and (2) obtaining search warrants and drafting search warrant affidavits. 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.

You inform us some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2011-09225 (2011) and 2011-06183 (2011). In both rulings, we determined the department may withhold portions of the requested General Orders that were at issue under section 552.108(b)(1) of the Government Code. You state there has been no change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter Nos. 2011-09225 and 2011-06183 as previous determinations and withhold or release the requested information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not

changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the prior rulings, we will consider your submitted arguments.

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 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), 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).

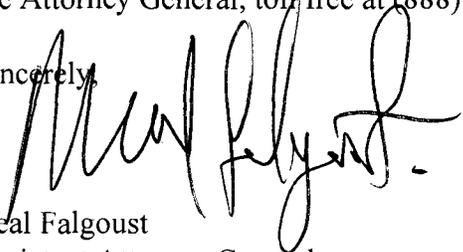
You state the submitted standard operating procedures contain information regarding how the department’s Narcotics Division investigates criminal activity. You state, and provide an affidavit from the department to support the assertion, that release of this information would reveal the tactics, techniques, and procedures used by officers in executing search warrants and using confidential informants. Based on your representations, and our review, we agree the release of the information we have marked would interfere with law enforcement. Accordingly, the department may withhold the marked information under section 552.108(b)(1) of the Government Code. However, we find the department has not established the release of the remaining information would interfere with law enforcement; therefore, the department may not withhold any of the remaining information under section 552.108(b)(1). As you raise no other argument against disclosure, the department must release the remaining information.

In summary, the department may continue to rely on Open Records Letter Nos. 2011-09225 and 2011-06183 as previous determinations and withhold or release the requested information in accordance with those rulings. To the extent the requested information is not encompassed by the prior rulings, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. 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](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 'Neal Falgoust', written over the word 'Sincerely,'.

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 435433

Enc. Submitted documents

c: Requestor  
(w/o enclosures)