



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2012

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2012-01086

Dear Ms. Grace:

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# 442968.

The Austin Police Department (the “department”) received a request for 1) any documentation listing specified persons, organizations, citizens, rumors, verdicts and other information gathered and any intelligence reporting that pertains to specified groups, events, individuals, and phrases that may have been disseminated to or from other specified groups or individuals during a specified time period; and 2) any correspondence or incident reports concerning specified groups, events, individuals, and phrases created by specified individuals during a specified period of time, excluding specified incident reports and communications subject to attorney-client privilege.¹ You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have

¹You state the department sought and received clarification of the request for information. See Gov’t Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note portions of the submitted information, which you have marked and we have marked, are not responsive to the instant request because they were created after the specified time period or because that information was specifically excluded from the request by the requestor. This decision does not address the public availability of the non-responsive information, and that information need not be released.

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 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). You state the information you have marked as Exhibit A relates to pending criminal prosecutions. You also state many of those arrested have criminal charges pending in the Travis County courts. You state the release of this information could interfere with the detection, investigation, or prosecution of crime. Based on your representation and our review, we conclude section 552.108(a)(1) is applicable to Exhibit A. *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).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, and a detailed description of the offense. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, which must be released, the department may withhold the responsive information in Exhibit A under section 552.108(a)(1) of the Government Code.

You assert the information you have marked as Exhibit B is confidential under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies

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

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.*, ORD 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 marked documents and communications detail law enforcement strategies and techniques that the department is currently using and will continue to use in future protests. You state release of this information would make it difficult for law enforcement to prepare for and conduct similar operations because the public will have prior knowledge of department strategies. You state such prior knowledge would interfere with the department's ability to maintain peace and could result in injuries to protestors and officers. Upon review, we agree the release of Exhibit B would interfere with law enforcement and crime prevention. Accordingly, the department may withhold the responsive information in Exhibit B under section 552.108(b)(1) of the Government Code.

In summary, with the exception of basic information, the department may withhold the responsive information in Exhibit A under section 552.108(a)(1) of the Government Code. The department may also withhold the responsive information in Exhibit B under section 552.108(b)(1) of the Government Code.

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 black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 442968

Enc. Submitted documents

c: Requestor
(w/o enclosures)