



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2012

Ms. Lee Ann Rimer
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2012-14407

Dear Ms. Rimer:

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# 464676.

The City of Odessa (the "city") received a request for five categories of information pertaining to the Odessa Police Department's narcotics unit (the "unit"): (1) the internal affairs investigation into the unit; (2) "documentation regarding possible violations of the [unit]"; (3) internal unit communications regarding the unit, "but not case-specific" for a specified time period; (4) the names of unit officers; and (5) the unit's 2012 fiscal year budget and 2013 fiscal year proposed budget.¹ You state the city will release some of the requested information. You also state some of the requested information does not exist.² You claim that the submitted information is excepted from disclosure under sections 552.106, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹You state, and provide supporting documentation demonstrating, the city 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).

²The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Economic 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).

Section 552.106 of the Government Code excepts from disclosure “[a] draft or working paper involved in the preparation of proposed legislation” and “[a]n internal bill analysis or working paper prepared by the governor’s office for the purpose of evaluating proposed legislation[.]” Gov’t Code § 552.106(a), (b). Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 460 (1987). The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body, and therefore, it does not except from disclosure purely factual information. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *Id.* Section 552.106 protects only policy judgments, advice, opinions, and recommendations involved in the preparation or evaluation of proposed legislation; it does not except purely factual information from public disclosure. *See* ORD 460 at 2.

You explain the information at issue in Exhibit C consists of the unit’s draft budget for fiscal year 2013. You further explain the draft budget has not yet been reviewed or approved by the City Council or City Manager. Based upon your representations and our review, we conclude the city may withhold Exhibit C under section 552.106 of the Government Code.

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). 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, 327 (Tex. App.—Austin 2002, no pet.).

To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989), 252 at 3 (1980). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

You seek to withhold the name of an undercover narcotics officer in Exhibit A because you contend release of this information would jeopardize the officer’s safety. Based on your representation, we conclude the release of the officer’s name we have marked in Exhibit A

would interfere with law enforcement and crime prevention. Therefore, we conclude the city may withhold this information under section 552.108(b)(1).

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

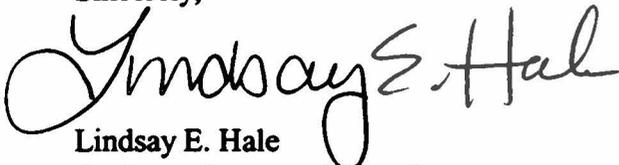
Gov't Code § 552.152. You inform us the officers listed in Exhibit B are undercover officers of the unit. You contend release of this information would endanger the lives and physical safety of the officers at issue and could subject the officers to a substantial threat of physical harm. Based on your representation, we agree the city must withhold the officer's names in Exhibit B under section 552.152 of the Government Code.

In summary, the city may withhold Exhibit C under section 552.106 of the Government Code. The city may withhold the information we have marked in Exhibit A under section 552.108(b)(1) of the Government Code. The city must withhold the officer's names in Exhibit B under section 552.152 of the Government Code. The city must release the remaining information in Exhibit A.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 464676

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**