



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 13, 1995

Mr. G. Todd Stewart
Olson & Olson
Three Allen Center, Suite 3485
333 Clay Street
Houston, Texas 77002

Open Records Decision No. 636

Re: Whether numbers called by individuals with specific law enforcement responsibilities on cellular telephones provided to the individuals by a governmental body are subject to disclosure under chapter 552 of the Government Code (ORQ-1)

Dear Mr. Stewart:

The City of Friendswood (the "city") has asked whether numbers called by individuals with specific law enforcement responsibilities on cellular telephones provided to the individuals by a governmental body are subject to disclosure pursuant to chapter 552 of the Government Code.¹ You have two concerns about releasing certain of the numbers called: (1) disclosure of these numbers may reveal the identities of confidential informants; and (2) disclosure of these numbers may reveal techniques used in the investigation and prosecution of criminal conduct. You claim that section 552.108 of the Government Code excepts this information from disclosure.

The request seeks the monthly billing statements for the calendar year 1994 for each person given a city cellular telephone. We therefore assume that the city pays the bill for each of the city cellular telephones. There is a legitimate public interest in the

¹We note that chapter 552 of the Government Code was amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.* The request for information at issue was received by the city on August 15, 1995.

expenditure of public funds. *See* Gov't Code § 522.022(3);² Open Records Decision Nos. 541 (1990) at 1-2, 520 (1989) at 5, 518 (1989) at 7, 233 (1980) at 2.³ Similarly, there is a legitimate public interest in how public officials conduct official business. Open Records Decision Nos. 518 (1989) at 4, 506 (1988) at 4. Consequently, the requested information should ordinarily be available to the public.

Section 552.108⁴ excepts from disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

(b) An 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.

Section 552.108 is designed to protect law enforcement interests. *See* Open Records Decision No. 252 (1980). Section 552.108(a) excepts from disclosure certain information relating to both open and closed criminal investigations. In cases that are still under active investigation, section 552.108(a) excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108(a) only if its release “will unduly interfere with law enforcement and crime prevention.” *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977); *see* Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986) at 4-5, 434 (1986) at 2-3. Section 552.108(b) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d at 710). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 2-3.

²Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 598, *amended by* Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 3, 1995 Tex. Sess. Law Serv. 5127, 5129 (Vernon).

³We do not address in this ruling whether telephone numbers called by individuals with specific law enforcement responsibilities on cellular telephones paid for by the individuals are excepted from disclosure under section 552.108.

⁴*Id.* at 600 (amended 1995).

In Open Records Decision No. 506 (1988), this office concluded that section 552.108 excepts from disclosure the cellular telephone numbers assigned to officials and employees with specific law enforcement responsibilities. We reasoned that “[w]ere the public to have access to the numbers, the purpose of these telephones, which is to insure immediate access to designated county officials and employees, most of whom have specific law enforcement responsibilities, could easily be defeated.” Open Records Decision No. 506 (1988) at 2. However, in that decision, this office did not address whether section 552.108 excepts from disclosure numbers called by those officials. We conclude that section 552.108 may except the numbers called by individuals with specific law enforcement responsibilities.

This office has previously recognized that law enforcement agencies may withhold information that would tend to identify confidential informants. Open Records Decision Nos. 362 (1983), 333 (1982), 252 (1980). In Open Records Decision No. 333 (1982) at 3-4, this office stated that confidential informants

are an integral part of effective law enforcement. They provide [police] officers with vital information concerning lawbreakers, potential witnesses and informants, possible locations of criminal activity, etc., that officers likely could not learn otherwise. If their identities were released to the public, the likelihood that they would continue to assist the police or even be of any value to them would be negligible. The chances of their being harassed or subjected to bodily injury would also be greatly enhanced.

Additionally, this office has stated that under section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under Gov’t Code § 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper department’s efforts to detect forgeries of drivers’ licenses), 252 (1980) (Gov’t Code § 552.108 is designed to protect investigative techniques and procedures used in law enforcement); *cf.* Open Records Decision No. 508 (1988) (release of information regarding *prior* transfers of specific prisoners would not unduly interfere with law enforcement). To claim this exception, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records

Decision Nos. 562 (1990) at 10, 518 (1989) at 6, 481 (1987) at 11, 444 (1986) at 4-5, 434 (1986) at 2-3, 409 (1984) at 2, 287 (1981) at 2, 252 (1980) at 2. Generally-known policies and techniques may not be withheld under section 552.108. Open Records Decision Nos. 531 (1989) at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force are generally-known policies and are not protected under Gov't Code § 552.108), 252 (1980) at 3 (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

We conclude that a cellular telephone bill does not explain on its face how its release would unduly interfere with law enforcement and crime prevention. Therefore, to claim the section 552.108 exception for this information, a governmental body must do two things: (1) mark the information it claims would tend to identify a confidential informant or would unduly interfere with law enforcement and crime prevention if released, and (2) detail how release of that marked information would identify the informant or unduly interfere with law enforcement.⁵ Without this information, the governmental body will not have met its burden under section 552.108. A generalized explanation is insufficient; the governmental body's argument must be addressed to the particular records requested or the portions of those particular records for which the governmental body is claiming the section 552.108 exception. Open Records Decision No. 434 (1986).⁶

We note that governmental bodies must withhold home telephone numbers of all "peace officers" as defined by article 2.12 of the Code of Criminal Procedure and home telephone numbers of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.⁷ See Open Records Decision Nos. 622 (1994), 455 (1987) at 2-3.

⁵The amendment to section 552.108 by the Seventy-fourth Legislature does not affect the legal analysis of this ruling. See Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 7, 1995 Tex. Sess. Law Serv. 5127, 5131 (Vernon) (to be codified at Gov't Code § 552.108(a)) (replacing reference to "A record of" with "Information held by"). A governmental body requesting a decision from this office under section 552.108 for a request for information received by the governmental body on or after September 1, 1995, will be required to meet the burden set out in this ruling.

⁶Similarly, if a governmental body wants to claim that section 552.108(a) excepts certain numbers called because they relate to active criminal investigations, the governmental body must indicate which numbers it claims are excepted and detail how they relate to an active criminal investigation. Likewise, if a governmental body wants to claim that section 552.108(a) excepts a telephone number that relates to a closed case, the governmental body must indicate which numbers it claims are excepted and detail how the release of those numbers would unduly interfere with law enforcement and crime prevention.

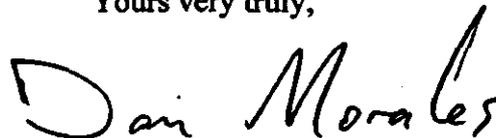
⁷Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 601 (Gov't Code § 552.117(1)) (amended 1995).

A governmental body may not withhold the home telephone number of an official or employee who has not elected to keep this information private at the time the request for the information is received by the governmental body. Open Records Decision No. 530 (1989). Therefore, if any of the numbers called by individuals with specific law enforcement responsibilities are home telephone numbers of peace officers or of current or former government employees who have made the election under section 552.024, you must withhold those telephone numbers. We will rule on the documents that we are resubmitting to you for marking in a separate open records letter.

S U M M A R Y

Section 552.108 of the Government Code may protect from disclosure the numbers called on cellular telephones provided by a governmental body to individuals with specific law enforcement responsibilities. To establish the section 552.108 exception to the numbers called, a governmental body must mark the numbers it claims are excepted and detail how release of the information would endanger a confidential informant or unduly interfere with law enforcement. A governmental body must withhold the home telephone numbers of peace officers and current or former government employees who have requested that this information be kept confidential under section 552.024 of the Government Code.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, slightly slanted style.

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