



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1995

Mr. Joe Bridges
Assistant District Attorney
Denton County Criminal District Attorney's Office
Counsel to the Sheriff
127 North Woodrow Lane
Denton, Texas 76205

OR95-729

Dear Mr. Bridges:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32521.

The Denton County Sheriff (the "county") received an open records request for information related to a particular county sheriff drug detection dog. You state that you have released portions of the information requested to the requestor. However, you contend that information requested by two parts of the open records request are excepted from required public disclosure by various exceptions under chapter 522 of the Government Code.

By part three, the requestor asks for information about the drug detection dog's involvement in a particular search of a pickup truck. The requestor seeks information about (1) the dog's location when he first alerted the handler of a detectable odor; (2) the dog's location when he went into final response; (3) the dog's behavior before and during detection of an odor; (4) whether the contraband item(s) were singled out or searched at random; and (5) the wind direction, approximate temperature and other weather conditions at the time of the seizure. You state that this search is related to pending litigation in the district court of the county. You contend that because of the pending litigation, the information requested in part three of this request may be withheld from required disclosure pursuant to section 552.103(a) of the Government Code. While you raise this exception, you also state that the county or its employees do not necessarily have this information. You have submitted no documents to this office reflecting any of the information requested regarding this particular search.

If a governmental body does not establish how and why an exception applies to requested information, there is no basis upon which to pronounce that it may be withheld from required public disclosure. Open Records Decision No. 542 (1990). Since the county has not submitted any responsive documents to part three we cannot conclude that the county may withhold the information requested in part three of the open records request pursuant to section 552.103(a).

Additionally, since chapter 552 of the Government Code only applies to information in existence at the time of the open records request and does not require a governmental body to prepare new information, if the county possesses no records regarding this portion of the request, it need not prepare any for the requestor. Open Records Decision No. 605 (1992).

By part 2e the requestor asks for the drug detection record of the dog from the beginning of service to October 22, 1994, including the number and date of false alerts. You state that the only responsive documents to this portion of the request are four spiral bound notebooks. These notebooks contain the handwritten notes of the dog's handler who is a peace officer. You contend that the information in the notebooks is excepted from required public disclosure pursuant to section 552.108 of the Government Code since the notebooks are internal records or notations of a law enforcement agency maintained for internal use in matters relating to law enforcement. You state that the information in the notebooks is used for the continuing training of the dog and the dog handler. You state that disclosure of the information in the spiral bound notebooks would disclose crime detection techniques used by the officer with the drug detection dog. You contend that for this reason, the information contained in the notebooks is excepted from required disclosure by section 552.108. You have submitted for our review a representative sample of the notebook entries.

Section 552.108 excepts from disclosure:

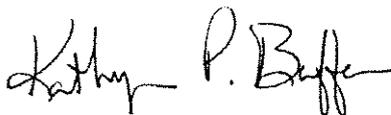
- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021.
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021.

Section 552.108(b) applies to information held by a law enforcement agency if its release "will unduly interfere with law enforcement and crime prevention." Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When claiming this reason for exception, a governmental body must demonstrate how release of the information would unduly interfere with law enforcement and crime prevention unless the records supply this explanation on their face. See Open Records Decision No. 508 (1988) at 4.

After reviewing the submitted samples from the dog handler's notebooks, we conclude that the county may withhold the information contained in the spiral notebooks pursuant to section 552.108 of the Government Code. We note that the department submitted to this office a "representative sample" of the requested information. Thus, in reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the records requested by part 2e of the open records request. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Since we have concluded that the information may be withheld pursuant to section 552.108, we need not address the applicability of section 552.117 of the Government Code to the home address of the peace officer which appears in the notebooks.¹ Additionally, we do not need to address your additional arguments urging other exceptions under chapter 552 of the Government Code. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref: ID# 32521

Enclosures: Submitted documents

cc: Mr. Bill Loveless
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(w/o enclosures)

¹Section 552.117 provides that "the home address and telephone number of a peace officer as defined by Article 2.12, Code of Criminal Procedure" is excepted from required public disclosure.