



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 14, 1995

Ms. J. Praba Cinclair
Assistant City Attorney
Criminal Law and Police Division
City of Dallas, City Hall
Dallas, Texas 75201

OR95-1418

Dear Ms. Cinclair:

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# 30739.

The Dallas Police Department (the "department") received a request for copies of any comments arising out of a narcotics assessment team created by former chief of police, Bill Rathburn. You contend that the requested information is excepted from required public disclosure under section 552.108 of the Government Code.

Section 552.108 provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(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 [required public disclosure].

This section excepts from required public 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 706, 710 (Tex. 1977)). 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 3. Whether information falls within the section 552.108 exception must be determined on a case-by-case basis.

You claim that "the information requested deals with the detection, investigation, or prosecution of a crime from our police department as well as police departments in other cities." However, you have not explained how releasing the requested information would unduly interfere with law enforcement. Furthermore, some of the information contained in the documents you submitted for review clearly does not come under the protection of section 552.108.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, or explain how that exception applies, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). Furthermore, it is well established that where one of the act's exceptions is clearly not applicable to all of the information in a requested record, a general claim that the exception applies to the entire record does not comport with the act's procedural requirements. See Open Records Decision No. 150 (1977) at 2. We, therefore, conclude that you have not met your burden under the Open Records Act to establish the extent to which section 552.108 the documents you submitted for review.

However, it is clear that some of the requested documents were not created by the department. There are records from the Phoenix Police Department, the Metro-Dade Police Department, and the Drug Enforcement Administration. It is also clear from the records, that the recommendations were generated by a multiforce team consisting of officers from the San Diego Police Department; the Drug Enforcement Administration; the Metro-Dade Police Department; the Bureau of Alcohol, Tobacco, and Firearms; and the Phoenix Police Department. You have fourteen days from the date of this letter to notify us that you have contacted the third parties and they have raised objections to the release of this information. If you do not notify us that there are compelling reasons for the withholding of the requested information by the fourteenth day, you must promptly release the requested information in its entirety.¹

¹We note that the department may have compelling reasons of its own, for example, if the department establishes that revealing a particular bit of information would put someone's life at risk. The department must, however, make a clear showing that there are compelling reasons for withholding specific portions of the submitted documents; general allegations will not suffice.

We are resolving this matter with an 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 should 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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LBC/rho

Ref: ID# 30739

Enclosures: Submitted documents

cc: Mr. Richard H. Kirks, Jr.
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(w/o enclosures)

