



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1998

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR98-0285

Dear Ms. Hengen:

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# 111997.

The City of El Paso Police Department (the "department") received two requests for information relating to "Money Evidence" or "Money Seizure Logs," as well as a request for information relating to budget and operational costs for the police investigative unit that operates out of offices near the El Paso International Airport. You initially assert that some of the responsive information pertains to a task force which operates under the control of the federal Drug Enforcement Administration ("DEA"), and thus, that information relating to this task force is DEA information which is not subject to chapter 552. In the alternative, you argue that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and have reviewed the submitted information.¹

First, we address your argument that a portion of the requested information is not subject to the disclosure requirements of chapter 552 since it pertains to a police task force operating under the control of the DEA. Although information which is confidential under federal law is excepted from disclosure under section 552.101 if it is transferred from a federal agency to a governmental body in Texas, Open Records Decision No. 561 (1990), information does not fall outside the requirements of chapter 552 because it is considered information of a federal agency. Virtually all information in the physical possession of a governmental body is subject to the Open Records Act, and whether it is excepted from public disclosure depends upon whether it comes within an exception set forth in subchapter C of chapter 552. See Open Records Decision No. 549 (1990); *Industrial Foundation of the South v. Texas Industrial Accident Bd.*, 540 S.W.2d 668, 676 (Tex. 1976), *cert. den.*, 430 U.S. 931 (1977). Therefore, we will address your arguments for withholding the requested information.

¹We assume that the "representative samples" of records submitted to this office are 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 that those records contain substantially different types of information than that submitted to this office.

Section 552.108, the "law enforcement exception," provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(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 [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You assert that release of the categories of information in Exhibit C marked "Case Agent," "Assisting Personnel," "Origin of Information," and those portions of the "Remarks" category that reflect other ongoing undercover investigations and locations of operations would interfere with the detection, investigation and prosecution of crime and this information is therefore exempt from disclosure under section 552.108. Similarly, you assert that release of information in Exhibit D in the section marked "Notes" that reflects how the task force operates and the locations of operations, would interfere with the detection, investigation and prosecution of crime and thus it is exempt from disclosure under section 552.108.

Upon review of the highlighted information in Exhibits C and D and your arguments against disclosure of this information, we conclude you have established how release of this information would interfere with the detection, investigation and prosecution of crime, and thus, this information is exempt from disclosure under section 552.108.² See Open Records Decision Nos. 409 (1984)

²We note that although you seek to withhold the categories of information in Exhibit D marked "Officer's Name" and "Facility," as well as information relating to the identity of suspects and the locations of operations, you did not submit this information to our office for review. You explain that Exhibit D does not contain all the information from the computer database "as the task force would have to re-write the computer program in order to printout all fields of information contained in the database," and "at the present time, we do not know if the requesters are willing to pay the fees that would allow for retrieval of this information." Because you have not submitted this information to our office for review, this ruling does not address the withholding of this information.

(disclosure of particular records relating to certain burglaries may exhibit pattern, discovery of which might disclose investigative technique), 211 (1978) (lists of personnel, travel voucher information, or items mentioning employees by name which, if disclosed, would reveal the identity of those engaged in undercover narcotics work, or would reveal when or where employees had traveled on sensitive assignments, excepted by predecessor to section 552.108). As we find that the highlighted information in Exhibit C may be withheld under section 552.108, we need not address your arguments under section 552.101 for this information.

The information in Exhibit E consists of the 1997 budget and operational costs for the police investigative unit that operates out of offices near the El Paso International Airport. You argue that, insofar as this information would identify the size of the task force or specific operations, it may reveal the procedures used by the task force and the level of enforcement, and therefore, would interfere with the detection, investigation or prosecution of crime. You similarly argue that to the extent release of the operational costs would identify specific equipment used in the undercover task force operations, it is exempt from disclosure.

This office has ruled that descriptions of specific electronic eavesdropping equipment and its exact cost, as well as descriptions of certain equipment designed for clandestine operations, are excepted by the predecessor to section 552.108. *See* Open Records Decision No. 143 (1976). Also, in Open Records Decision No. 211 (1978), we quoted Open Records Decision No. 22A (1974) and stated that “[g]enerally, we believe that information which would reveal specific operations . . . directly related to investigation or detection of crime is excepted from disclosure. Thus, for example, salary information that would reveal the identity of undercover agents is excepted, while that relating to other employees may not necessarily be. . . .” We have marked the information in Exhibit E that you have established may be withheld under section 552.108, as it would identify undercover agents or otherwise interfere with the detection, investigation or prosecution of crime.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 111997

Enclosures: Submitted documents

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