



March 27, 2001

Mr. Michael J. Cosentino
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2001-1201

Dear Mr. Cosentino:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 145390.

The Bryan Police Department (the “department”) received two requests for “electronic communications (E-Mails) sent or received from all mobile computer equipped police patrol units” for specified times and dates. You claim that the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered your arguments and have reviewed the submitted representative sample of information.¹

Section 552.108 of the Government Code states that an internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement is excepted from required public disclosure if release of the internal record or notation would interfere with law enforcement. Gov’t Code § 552.108(b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see* also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The department argues that the “encrypted e-mail messages are categorically exempt from public disclosure, regardless of their contents, because allowing the public to have access to

¹We assume that the “representative sample” of records submitted to this office is 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.

them would interfere with essential law enforcement functions.” You further explain that the encrypted messages can only be accessed by authorized personnel with a password in order to allow police officers to freely communicate with each other and prevent criminals from accessing the communications. You conclude that if “the public can gain access to encrypted police e-mail communications by making a request for them under The Act, the whole purpose for having and using the system would be defeated.” We disagree with the department’s arguments.

The department’s arguments focus on the encryption system itself rather than the contents of the electronic messages. The requestor does not seek any information concerning the encryption system. The communications themselves do not reveal any information concerning the encryption system. Furthermore, release of the messages do not allow criminals or a member of the public to access all of the department’s encrypted messages or give away the password to the system. Here, the request is for specified electronic messages. A determination of whether section 552.108(b)(1) excepts the messages from public disclosure is made on a case-by-case basis depending on the department’s demonstration of how release of the requested messages would interfere with law enforcement. After reviewing the submitted information, we conclude that you have failed to demonstrate that release of the information reveals the department’s operations, strategies, and methods or interferes with law enforcement. Thus, you must release the requested electronic communications.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body

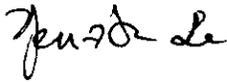
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.,—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/er

Ref.: ID# 145390

Encl. Submitted documents

cc: Mr. Travis B. Bryan, III
Youngkin, Catlin, Bryan, Stacy, & Dillard
P.O. Box 4629
Bryan, Texas 77805
(w/o enclosures)