



May 9, 2002

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2002-2474

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162622.

The Texas Department of Criminal Justice (the “department”) received a request for a copy of all of the proposals and other information pertaining to the Invitation to Bid number 696-PD-0-0035 for Radio Frequency Electronic Monitoring (Radio Frequency EM) System/Service dated March 31, 2000. You inform us that this office has issued a previous ruling concerning a portion of the information responsive to this request. In that ruling, this office determined that section 552.108 was shown to except the Section II Technical Offer, Inventory Tracking Manual, Disaster Recovery Manual, and Equipment Demonstration and Testing Folder of Ameritech (Security Link), as well as the Section II Technical Offer and certain other materials of General Security Services Corporation. As the current request seeks information that is identical to information previously ruled upon by this office in OR2000-4357 (2000), namely, information pertaining to Ameritech (Security Link) and General Security Services Corporation, you must rely on that ruling as a previous determination and withhold responsive information pertaining to Ameritech (Security Link) and General Security Services Corporation in accordance with OR2000-4357 (2000). *See* Open Records Decision No. 673 (2001) (so long as law, facts, the circumstances on which prior ruling was based have not changed, the first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not excepted from disclosure).

With regard to the responsive information not previously ruled on, you claim that this information is excepted from disclosure under section 552.108 of the Government Code. In addition, pursuant to section 552.305, you notified representatives of Electronic Monitoring Systems, Inc., and Protell Systems International, Inc. of the request for their information and invited these entities to submit arguments to this office as to why the information at issue should not be released.¹ Neither entity provided arguments to this office. Accordingly, we have no basis on which to conclude that these entities' requested information is excepted under section 552.110. See Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). We will therefore consider your argument under section 552.108 for withholding the submitted information.

Section 552.108(b) provides in pertinent part as follows:

(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 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Initially, we note that the department is a law enforcement agency for purposes of section 552.108. See Open Records Decision No. 413 (1984) (interpreting predecessor statute). This office has stated that under the statutory predecessor to 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 section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or

¹See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

specialized equipment directly related to investigation or detection of crime may be excepted). However, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

To claim the section 552.108 exception, 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 interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). The department claims that the information which it seeks to withhold includes technical and operational details of systems used to monitor the location of certain persons on parole or under mandatory supervision. The department relates that the movements of these individuals, many of whom are sex offenders, are closely constrained and controlled because they present a high risk of danger. The department further relates that release of the information could compromise the effectiveness of the monitoring system since the information can be used to develop methods to create the appearance of compliance while in fact the releasee is engaged in the very conduct the system is designed to help prevent. The department argues that release of information pertaining to the emergency recovery plans could suggest ways to destroy the systems at their most vulnerable points. The department also argues that, "not only the system in use by [the department] based on the proposal of the winning bidder might be compromised but also other law enforcement agencies using these same systems submitted in response to our request could be compromised by the release of the requested proposals."

Based on the representations of the department, and our review of the submitted materials, we conclude that the department has demonstrated that release of the submitted information, consisting of the Electronic Monitoring Systems, Inc. Demonstration and Testing Folder, Protell Section II Technical Offer, Protell Disaster Recovery Plan, Protell Demonstration and Testing Folder, Protell Systems Handbook and Systems Monitoring Station Handbook, and Protell Fundamentals Training Manual, would interfere with law enforcement and prevention. Therefore, the submitted information may be withheld in its entirety under section 552.108(b)(1).

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 Department 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 162622

Enc. Submitted documents

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