



June 24, 2002

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law & police Division
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2002-3409

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164724.

The Dallas Police Department (the “department”) received a request for a copy of “[a]ll narcotics policies the Street Squad had been provided and was operating under as of June 2001. Also any amendments to those policies made since that time.” You indicate that some of the information requested was at issue in two previous rulings from this office, Open Records Letter Nos. 2002-1936 and 2002-2724 (2002). In Open Records Letter No. 2002-1936 (2002), this office determined that based on section 552.108, the department may withhold portions of the requested information concerning the policies and procedures for gathering and testing of narcotics evidence by the department. In Open Records Letter No. 2002-2724 (2002), this office determined that the department may withhold information concerning policies and procedures for paying confidential informants. So long as the law, facts, and circumstances on which these prior rulings were based have not changed, you may withhold the information at issue in these prior rulings based on section 552.108. *See* Open Records Letter No. 673 (2001). You claim that the remainder of the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. To the extent that the submitted information is not addressed by the previous rulings, we have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under 552.103(a).

You state that civil lawsuits regarding recently dismissed criminal drug cases were pending at the time of the request. You inform us that one particular lawsuit, case number 3:02CV179-G, has been filed against the City of Dallas in federal court. Based on your assertions, we agree that the information relates to pending litigation. Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). While you generally may withhold the information under section 552.103, you must release any information that has already been obtained by the opposing party or parties in the pending litigation.¹

We turn now to your arguments under section 552.108. Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Generally, a governmental body claiming section 552.108(b)(1) 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

¹We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You contend that release of the requested policies could “jeopardize the safety of [department] officers, as well as informants,” “help criminals to identify undercover officers in the field and to avoid detection,” and “hinder officers’ ability to establish and maintain relationships with informants.” Having reviewed your arguments and the submitted information, we agree that the release of the information would interfere with law enforcement or crime prevention. Accordingly, the department may withhold the information from disclosure under section 552.108(b)(1).

In summary, the department may withhold the submitted information to the extent that it is addressed by Open Records Letter Nos. 2002-1936 and 2002-2724 (2002). To the extent that the information is not addressed by these rulings, the department may withhold this information based on sections 552.103 and 552.108.

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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 164724

Enc: Submitted documents

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