



September 13, 2002

Mr. Mark G. Daniel
Evans, Gandy, Daniel & Moore
Sundance Square
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2002-5126

Dear Mr. Daniel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168537.

The City of Watauga (the “city”), which you represent, received a request for the Manual of Standard Operating Procedures for the Watauga Police Department. You claim that portions of the requested information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the requestor. *See* Gov’t Code § 552.304 (permitting interested party to submit reasons why requested information should or should not be released).

First, we note the requestor made an open records request to the city on June 10, 2002. In item four of the request, the requestor seeks “Police Standard Operating Procedures of confronting, detaining, arresting suspects. (Such as officer identifying himself as a police officer and ordering suspect to halt, freeze, or other command).” The requestor has provided this office with a copy of his June 10, 2002 request letter, a copy of the city’s letter to the requestor responding to this request, and a copy of information the requestor states he received from the city in response to the above request. As it appears that the city has already released a portion of the information to the requestor, it may not now withhold this information, which we have marked, under section 552.108. *See* Gov’t Code § 552.007 (prohibiting selective disclosure of information), Open Records Decision No. 177 at 3 (1977) (stating that governmental body may waive statutory predecessor to section 552.108).

In addition, a portion of the information you now seek to withhold from the requestor is responsive to item number four of the requestor's June 10, 2002 request. Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

The city did not timely seek a decision from this office with regard to a portion of the submitted information that is responsive to item four of the requestor's June 10, 2002 request. Because the request for a decision was not timely received, this information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). You have not raised any specific compelling reasons to overcome the presumption that the information is public. Thus, we conclude that submitted information responsive to item four of the requestor's June 10, 2002 request, which we have marked, must be released to the requestor.

We will next address your arguments for withholding the remainder of the submitted information. You claim section 552.108 excepts from disclosure portions of the submitted manual, as well as portions of DPS Orders 97-008 and 99-006, and the "Child Abduction Notification" in its entirety. Section 552.108 of the Government Code provides 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 [public disclosure] if:

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

....

(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.

Gov't Code § 552.108. 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). You state that the release of portions of the requested manual would unduly interfere with law enforcement by giving individuals an advantage in confrontations with police and increasing the chance of an individual evading arrest or injuring the officer or another person. With regard to DPS Order 97-008 and the "Child Abduction Notification," you state that release of the highlighted information would give persons the ability to fabricate child abduction reports. You further argue that release of the highlighted information in DPS Order 99-006 would make it easier for persons to learn when residences are vacant, making those residences more susceptible to burglary.

After careful review of the information you seek to withhold and your arguments against disclosure of this information, we conclude that the release of most of the information you have highlighted in the submitted manual, DPS Orders, and abduction notification would interfere with the detection, investigation, or prosecution of crime. *See* Open Records Decision No. 531 (1989). You may withhold this information from disclosure based on section 552.108(b)(1). However, we find you have not adequately demonstrated how release of a portion of the submitted information would interfere with law enforcement. We have marked this information, which may not be withheld under section 552.108(b)(1).

To summarize, the city may withhold under section 552.108(b)(2) the information it has highlighted, with the exception of the information we have marked to be released. The information we have marked, as well as the remaining submitted information that you have not highlighted, must be released to the requestor.

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,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 168537

Enc. Submitted documents

c: Mr. Melvin Tomlinson
5932 Birchill
Watauga, Texas 76148
(w/o enclosures)