



October 1, 2002

Ms. Wanda Cornell
Mayor
City of Mart
P.O. Box 360
Mart, Texas 76664

OR2002-5523

Dear Ms. Cornell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170065.

The City of Mart ("city") received a request for information relating to police work schedules during a certain time period. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted sample of information.¹ We have also considered the comments submitted to this office by the requestor per section 552.304 of the Government Code.

Section 552.108 provides in relevant part:

(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[.]

This office has stated that under the statutory predecessor to section 552.108(b) that a governmental body may withhold information that would reveal law enforcement techniques.

¹We assume that the 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.

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), 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 driver licenses), 252 (1980) (statutory predecessor to section 552.108(b) designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

To claim this exception, however, 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. *See* Open Records Decision No. 562 (1990). Furthermore, 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).

You state that the city is not able to offer 24-hour police coverage because it only employs two police officers. You claim that releasing scheduling patterns would unduly interfere with law enforcement as it would give potential criminals knowledge of when an officer is likely to be on duty and might confer an advantage in avoiding or confronting officers. Based on your argument and our review of the information submitted, we conclude that release of such internal records would interfere with law enforcement or prosecution. Therefore, this information is excepted from disclosure under section 552.108(b)(1) and may be withheld.

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,



Jon Tate Self
Assistant Attorney General
Open Records Division

JTS/seg

Ref: ID# 170065

Enc. Submitted documents

c: Mr. Randall T. Hickman
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Mart, Texas 76664
(w/o enclosures)