



December 2, 2002

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2002-6843

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172929.

The Texas Department of Public Safety (the “department”) received a request for eleven categories of information regarding the process by which the department verifies an applicant’s identity prior to issuing a driver’s license or identification card. You state that the department does not maintain a portion of the requested information. We note that the Public Information Act (the “Act”) does not require the department to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You also state that you will release most of the responsive information. However, you claim that three documents responsive to the request for information are exempted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.108(a)(1) exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and

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<sup>1</sup>We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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). We have previously held that portions of police procedures are excepted under section 552.108(b)(1) because release of the procedures would impair an officer's ability to enforce the law and would place individuals at an advantage in confrontations with the police. *See* Open Records Decision No. 531 (1989). However, portions of the procedures that relate to generally known common-law rules, constitutional limitations, or Penal Code provisions are deemed public information. *Id.* at 3.

You state that Exhibit A consists of a manual distributed to driver's license field offices that assists personnel in determining the validity of documents from other states and a similar pamphlet distributed by the American Association of Motor Vehicle Administrators and the National Highway Transportation Safety Board. You state that neither of these documents are available to the general public and that distribution is limited to government agencies with a legitimate interest in the authenticity of identification documents. Further, you assert that "with the information in these publications, particularly the detailed descriptions in the manual that include hidden and masked security features, anyone wishing to forge a driver's license would be able to produce a document more likely to pass routine security" and that "not only is creating fraudulent documents in and of itself a crime . . . the ability to assume an alternate identity with impunity is invaluable to persons who routinely engage in criminal activity and, naturally, wish to escape detection." Finally, you contend that "the public release of material such as this would substantially interfere with law enforcement efforts to prevent and detect criminal offenses such as forgery, fraud, and theft." After reviewing your arguments and Exhibit A, we conclude that you may withhold Exhibit A in its entirety. *See id.*; Gov't Code § 552.108(a)(1), (b)(1).

In regard to Exhibit B, you assert section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under

section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990). Having reviewed the information at issue, we conclude that Exhibit B consists of advice, opinions, recommendations, or other material reflecting the policymaking processes of the governmental body. Therefore, you may withhold Exhibit B under section 552.111 of the Government Code.

In summary, we conclude that: 1) you may withhold Exhibit A under section 552.108 of the Government Code; and 2) you may withhold Exhibit B under section 552.111 of the Government Code.

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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/lmt

Ref: ID# 172929

Enc: Submitted documents

c: Mr. Joseph P. Berra  
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(w/o enclosures)