



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 23, 2003

Mr. David M. Berman
Nichols, Jackson, Dillard, Hager & Smith
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2003-2687

Dear Mr. Berman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179793.

The Town of Double Oak (the "town") received a request for the police department's policies and procedures manual. You state that you will release Chapters 1 through 7, 11, 14, 28 through 31, and 36 of the Double Oak Police Department's Policy and Procedure Manual (the "manual"). However, you claim that the remainder of the requested manual is excepted from disclosure under section 552.108 of the Government Code. We note that you have not submitted chapters 12, 13, and 17 for our review. To the extent such information exists, we presume you have released it to the requestor. If you have not, you must do so at this time. *See* Gov't Code §§ 552.301, .302. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code 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). This office has stated that certain procedural information may be withheld under section 552.108 of the Government Code, or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To claim this aspect of

section 552.108 protection, 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. Open Records Decision No. 562 at 10 (1990). Further, commonly 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 with law enforcement and crime prevention).

You argue that release of the manual would interfere with law enforcement and prosecution. You further state that release would “enable someone to evaluate the strengths and weaknesses of the department, and to anticipate and predict the actions and responses of the police department in criminal investigations and emergency situations, thereby enabling one to commit crimes and evade apprehension.” Upon review of the submitted information, we conclude that some of the submitted information, which we have marked, may be withheld under section 552.108(b)(1) of the Government Code. Some of the submitted information, however, consists merely of commonly known law enforcement policies and techniques that may not be withheld under section 552.108(b)(1). Further, we find that you have not met your burden of explaining how and why release of the remaining submitted information would interfere with law enforcement and crime prevention. Nor are we able to determine from a review of the submitted information how and why release of such information would interfere with law enforcement and crime prevention. Thus, the remaining unmarked information 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

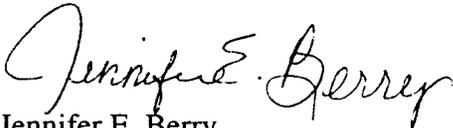
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 Dep't of Pub. 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 179793

Enc: Submitted documents

c: Mr. Benny Utley
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(w/o enclosures)