



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

June 10, 2003

Mr. Lawrence G. Provins  
Assistant City Attorney  
City of Pearland  
3519 Liberty Drive  
Pearland, Texas 77581

OR2003-3978

Dear Mr. Provins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182535.

The City of Pearland (the "city") received a request for "all photograph [sic] and video tapes taken by city employees and police dept [sic] on Sunday Nov. 17, 2003 at protest at Judge Matt Zepeda [sic]" 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.<sup>1</sup>

First we address the applicability of your section 552.108(b)(1) argument. Section 552.108(b) of the Government Code provides in pertinent 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:

---

<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). 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.

(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). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 2002 WL 31026981 (Tex. App.—Austin, Sept. 12, 2002) (No. 03-02-00074-CV). 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). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You assert that the release of the submitted information would interfere with law enforcement, and that the videos and photographs requested are internal records of law enforcement. You state that the submitted sample consists of criminal intelligence data gathered by city police and that the release of this information would interfere with law enforcement. You state that

[t]he information responsive to Exhibit A is being maintained to develop strategic and tactical intelligence data relating to those organizations and possible criminal activity. Criminal intelligence files are developed to : (1) identify crime problems and persons involved in criminal activities; analyze criminal information in order to provide operational units of the Department and other law enforcement agencies with necessary data to investigate criminal activity; (2) obtain investigative leads; (3) locate evidence or wanted

individuals; (4) and identify perpetrators and eliminate suspects in unsolved offenses.

Further, you explain that “[a]lthough a file may be opened in connection with a specific criminal investigation, the file is not closed once an arrest is made and the case is prosecuted” and that “[b]ecause the underlying criminal enterprise being investigated still exists . . . the investigations of members of these organizations continue. . . [and] are used to develop additional leads on suspected criminal activity.” Finally, you assert that

[c]onsequently, the release of the reports and other documentation in these files could hinder any open criminal investigations reflected in the files as well as the ongoing intelligence gathering process. Disclosure would inform the individuals named in these documents that their activities are under investigation by law enforcement. This would allow these individuals to change their methods of operation to make it more difficult and more dangerous for law enforcement to gather the information necessary to successfully arrest and prosecute these individuals.

Based upon your arguments and our review of the submitted information, we agree that the release of the submitted information would interfere with law enforcement and crime prevention. Thus, the department may withhold the submitted information under section 552.108 of the Government Code in its entirety.

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,



Robert F. Maier  
Assistant Attorney General  
Open Records Division

RFM/seg

Ref: ID# 182535

Enc. Submitted documents

c: Mr. Jack Roberts  
2918 Green Tee  
Pearland, Texas 77581  
(w/o enclosures)