



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

August 21, 2003

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2003-5897

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186342.

The College Station Police Department (the "department") received a request for information relating to department policy regarding the audio and video recording of traffic stops. You state that some responsive information will be released. You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. You contend that the requested information is confidential pursuant to section 552.101 in conjunction with chapter 418 of the Government Code. The Seventy-eighth Legislature recently added sections 418.176 through 418.183 to chapter 418 of the Government Code. These newly enacted provisions make certain information related to terrorism confidential. House Bill 9, which became effective on June 22, 2003, provides for the confidentiality of certain information collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. *See* Act of June 2, 2003, 78th Leg., R.S., H.B. 9, § 3 (to be codified at Gov't Code §§ 418.176-418.183). The newly enacted section 418.176 of the Government Code makes confidential certain information relating to the staffing requirements, tactical plan, and list of pager or telephone numbers of an emergency response provider, including a law enforcement agency. Upon review, however, we find that you have not established, nor does the information indicate on its face, how the information at issue is within the scope

of the newly enacted provisions of chapter 418. Thus, we find that you have not demonstrated that section 552.101 of the Government Code is applicable to any of the submitted information.

Next, section 552.103 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information *and* (2) that the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

You represent that the requested information relates to the pending prosecutions of two named criminal defendants who are clients of the requestor. You indicate that the prosecutions were pending when the department received this request for information. You do not inform us, however, that the department is a party to the pending criminal litigation. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). Under such circumstances, we require an affirmative representation from the prosecuting attorney representing the governmental body that is a party to the litigation that the prosecuting attorney wants the submitted information withheld from disclosure under section 552.103.

You have submitted a letter from an Assistant County Attorney for Brazos County, stating that his office is prosecuting the pending cases. The prosecutor states that "[t]he information being requested relates to our pending criminal litigation because it includes internal police

department planning and policies related to the arrests of individuals for criminal offenses.” The letter asks that the requested information be withheld from disclosure to protect the prosecutor’s position in the pending criminal prosecution. We find that you have established that criminal litigation was pending when the department received this request for information. However, we find that neither the department nor the prosecutor has explained, nor does the information indicate on its face, how the requested information relates to the pending criminal litigation. *See* Open Records Decision Nos. 551 at 5 (1990) (attorney general will determine whether governmental body has reasonably established that information is related to litigation), 511 at 2 (1988) (information “relates” to litigation under section 552.103 if its release would impair governmental body’s litigation interests). We therefore determine that the department may not withhold the information at issue pursuant to section 552.103 of the Government Code.

We next address your claims under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You contend that the information at issue is related to the pending prosecutions because the information may be used by the requestor during cross-examination of prosecution witnesses at trial. The prosecutor also contends that the release of the information at issue would interfere with the prosecutions of the requestor’s clients. However, neither the department nor the prosecutor has informed us that the information at issue relates to the arrests that resulted in the pending prosecutions. Thus, we find that neither the department nor the prosecutor has demonstrated that the release of any of the information would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 434 at 3 (unless records show on their face that disclosure would interfere with law enforcement or prosecution, law enforcement agency must explain how release of particular records or parts thereof will do so). We therefore determine that none of the information is excepted from disclosure under section 552.108(a)(1).

You also raise section 552.108(b)(1), which excepts from disclosure “[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution.” You contend that, with the

exception of the information you have marked for release, the submitted information constitutes internal law enforcement records that are excepted under section 552.108(b)(1). 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*, 86 S.W.3d 320, 327 (Tex.App.—Austin, 2002, no pet.) To claim this exception, a governmental body must explain, 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). 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), 252 at 3 (1980) (governmental body did not meet burden under section 552.108 because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). Upon review of your arguments and the submitted information, however, we find that you have not shown that the release of any of the information at issue would interfere with law enforcement or crime prevention. See Gov't Code § 552.108(b)(1); Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts, unless information does so on its face). We therefore determine that the department may not withhold any of the information under section 552.108(b)(1). As you raise no other exceptions to disclosure, we conclude that the department must release the submitted information 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 186342

Enc: Submitted documents

c: Mr. Craig M. Greaves  
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(w/o enclosures)