



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

December 30, 2003

Ms. Caroline Kelley  
Assistant City Attorney  
City of Missouri City  
1522 Texas Parkway  
Missouri City, Texas 77489

OR2003-9353

Dear Ms. Kelley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193465.

The Missouri City Police Department (the "department") received a request for all minutes and financial records of the Fort Bend Narcotics Task Force over a specified time period. You state that the department has released some of the requested information to the requestor. However, you question whether the department is the appropriate entity to respond to this request for information. Additionally, you claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we will address your question of whether the department is the appropriate entity to respond to this request for information. Section 552.002(a) defines "public information" as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Thus, information is generally "public information" under the Public Information Act (the "Act") when it relates to the official business of a governmental body or is maintained by a

public official or employee in the performance of official duties. You state that “the Chief of Police possessed these documents as a result of his serving on the Task Force Board.” Therefore, we find that the submitted information was maintained by the Chief of Police in the performance of his official duties. Accordingly, we conclude that the submitted information is subject to disclosure under the Act and must be released to the requestor, unless an exception to disclosure applies. *See* Gov’t Code § 552.002(a).

You seek to withhold the identities of undercover narcotics agents under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from required public 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[.]” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet. h.) (Gov’t Code § 552.108(b)(1) protects information which, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws).

The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would interfere with law enforcement because disclosure would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (statutory predecessor was 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). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *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 not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

A governmental body that relies on section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989); *see also* Open Records Decision Nos. 434 at 2 (1986) (circumstances of each case must be examined to determine whether release of particular information would interfere with law enforcement or crime prevention), 409 at 2 (1984) (whether disclosure of particular records will interfere with law enforcement or crime prevention must be decided on case-by-case basis).

You assert that public disclosure of the identities of undercover narcotics agents would interfere with law enforcement. You argue that “the involved officers would face an imminent threat of physical danger if their identities and specific undercover activities were released to the public.” Additionally, you assert that the integrity of the investigations would be compromised, and that the ability of the agents to continue in their undercover status would be destroyed. Having considered your arguments, we conclude that you have demonstrated that the release of the information at issue would interfere with law enforcement and crime prevention. *See also* Open Records Decision Nos. 456 at 2 (1987) (statutory predecessor to Gov’t Code § 552.108 protected information that, if revealed, might endanger life or physical safety of law enforcement personnel), 211 at 4 (1978) (statutory predecessor protected identities of members of Attorney General’s Organized Crime Task Force engaged in undercover narcotics work). Therefore, the department may withhold the identifying information of undercover narcotics agents under section 552.108(b)(1). All remaining information must be released. As our ruling on this issue is dispositive, we need not address your remaining arguments.

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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/lmt

Ref: ID# 193465

Enc: Submitted documents

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(w/o enclosures)