ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 15, 2004

Mr. Jonathan Kaplan
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2004-3066

Dear Mr. Kaplan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199351. Bexar County (the "county") also received a request for the identical records. The county sought a ruling from this office which was assigned ID# 200043. You now indicate that the City of San Antonio is requesting a ruling on behalf of both entities. Accordingly, we have combined these files and will consider the issues presented in this single ruling assigned ID# 199351.

The City of San Antonio (the "city") received a request for records pertaining to the City of San Antonio/Bexar County Public Safety Radio System (the "system"). Specifically, the requestor seeks the following information:

1. a work breakdown for the deployment of the system, outlining cut-over and implementation dates;

2. the request for proposals and responses from MA/COM, Dailey Wells, and any other associated vendors;

3. the official contract between MA/COM, Dailey Wells, and any other associated vendors;

4. the documentation related to the decision only to utilize EDACS System Key (ESK);

5. the frequency assignments for each site location, including EDACS logical channel order (LCN);

6. the documentation outlining talkgroup assignments for users of the system;

7. the training manuals and reference information provided to users of the system;

8. the media access policy;

9. the citizen access policy; and

10. any and all documents related to the implementation of the system that does not match the above criteria.

You state that information responsive to items 2, 3, 7, 8, and 9 will be released. You also state that documents responsive to items 4 and 5 do not exist.[1] *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (stating that governmental body is not required to disclose information that did not exist at time request was received). You further state that the requestor subsequently withdrew his request for information responsive to item 10. You claim, however, that information responsive to items 1 and 6 of the request are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your claimed exceptions and have reviewed the submitted sample records.[2] We have also considered the comments submitted by the United States Department of Justice. *See* Gov't Code § 552.304 (providing that interested party may submit comments explaining why requested information should or should not be released).

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531

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[1]Because you state that information responsive to item 5 does not exist, we need not address your contention that this information is not public information as defined by section 552.002 of the Government Code.

[2]We assume that the sample records submitted to this office are 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.

at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under Gov't Code § 552.108), 341 (1982) (release of certain information from Texas Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (Gov't Code § 552.108 is 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). Generally known policies and techniques, however, 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 Gov't Code § 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).

You explain that the system will provide end-to-end digital communications (encrypted and non-encrypted) for various city departments, including police, fire and emergency medical services. In addition, the county Sheriff's Office and several federal law enforcement agencies will use the system. You state that the system will be implemented in phases, with departments going online at different times. You also state that once the system is completely functional, it will be extremely difficult for someone to "hack" into it. You assert, however, that if the requested information is released, a person could effectively "hack" into the system. You claim that the "hackers" would then have access to personnel deployment information and other vital law enforcement information. You also advise that, in addition to being able to listen to critical law enforcement information, the "hackers" would have the ability to "jam" the system thereby crippling emergency services. Based on your representations and our review of the submitted information, we conclude that the city has demonstrated that the release of information responsive to items 1 and 6 of the request will interfere with law enforcement. Accordingly, information responsive to items 1 and 6 of the request may be withheld from disclosure under section 552.108(b)(1).[3]

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[3]Because we are able to make a determination under section 552.108, we need not address your additional arguments against disclosure.

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).

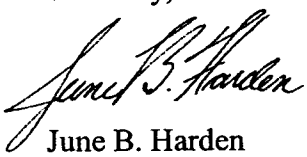
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



June B. Harden
Assistant Attorney General
Open Records Division

JHB/seg

Ref: ID# 199351

Enc: Submitted documents

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