



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2004

Mr. Brad Norton  
Assistant City Attorney  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-546

OR2004-5138

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203336.

The City of Austin (the "city") received a request for information pertaining to surveillance cameras owned or maintained by the police department and city officials. You have submitted an incident report, the user instructions for a remote surveillance module, and portions of the city's police department procedures manual for our review. You claim that the submitted information is 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 representative samples of information.<sup>1</sup>

You assert that the submitted information is protected from public disclosure by one of the newly-enacted provisions of the Texas Homeland Security Act. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information

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<sup>1</sup>We assume that the sample of records submitted to this office is truly representative of the requested records at issue. *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. To the extent the city holds responsive information that it has not released and that is not represented by the submitted samples, the city has failed to comply with section 552.301(e)(1)(D) of the Government Code. Accordingly, any such information is "presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." *See* Gov't Code § 552.302.

made confidential by other statutes. You assert that the submitted information is confidential under section 418.182(a) of the Government Code, which provides as follows:

Sec. 418.182. CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO SECURITY SYSTEMS.

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Gov't Code § 418.182(a). The fact that information may relate to a governmental body's security concerns does not make the information per se confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A).

You explain that the submitted information "relates to security cameras used to protect city facilities and public areas from an act of terrorism or related criminal activity." However, you have not demonstrated that the security cameras referred to in the submitted documents are part of a security system. Also, while you argue that these security cameras are used to protect against acts of terrorism, we note that the submitted records indicate that the security cameras referred to in the submitted information are used for general law enforcement purposes. Having reviewed the submitted information and your arguments, we find that the city has not adequately shown how this information reveals the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Thus, the city may not withhold any portion of the submitted information on this basis.

We understand you to assert that the submitted incident report is excepted from disclosure under section 552.108(a)(1) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted report relates to a pending criminal investigation. Based on your representations and our review, we determine that the

release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (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).

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold the submitted incident report under section 552.108(a)(1).

We also understand you to assert that the submitted user instructions for a remote surveillance module and portions of the city's police department procedures manual are excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) 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: (1) release of the internal record or notation would interfere with law enforcement or prosecution.” Gov't Code § 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 Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). 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. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, 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 law enforcement exception), 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). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

You state that the information at issue “relates to undercover and other specialized law enforcement techniques and equipment” and that “[i]ts release would allow a person to simultaneously violate the law and avoid detection.” You also argue that release of this information would reveal “tactics used in undercover operations . . . which could compromise future operations and endanger the lives of undercover officers.” However, upon review of this information, we find that you have failed to explain how it differs from

procedures and techniques that are commonly known and have failed to meet your burden of explaining how and why release of this information would interfere with law enforcement and crime prevention. *See* ORD 562 at 10. Therefore, none of this information may be withheld pursuant to section 552.108(b)(1). As the city claims no other exceptions to disclosure, the submitted user instructions for a remote surveillance module and portions of the city's police department procedures manual must be released to the requestor.

In summary, the city may withhold the submitted incident report under section 552.108(a)(1) with the exception of basic information, which must be released under section 552.108(c). The submitted user instructions for a remote surveillance module and portions of the city's police department procedures manual 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,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 203336

Enc. Submitted documents

c: Mr. Jonathan York  
The Daily Texan  
P.O. Box D  
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(w/o enclosures)