



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 16, 2005

Mr. Patrick L. Flanigan  
36<sup>th</sup> District Attorney  
Project Director  
Tri-County Narcotics Task Force  
P.O. Box 1393  
Sinton, Texas 78387

OR2005-08464

Dear Mr. Flanigan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 232437.

The Tri-County Narcotics Task Force (the "task force") received a request for nine categories of information pertaining to task force case logs, agents, and confidential informants, excluding the names and identifying information of any current informants. You claim that a portion of the requested information is excepted from disclosure under sections 552.102 and 552.108 of the Government Code. You state that you have no responsive information regarding "forms L1 and F5."<sup>1</sup> We have considered the exceptions you claim.

Pursuant to section 552.301(e) of the Government Code, a governmental body must submit the following information to this office within fifteen business days of its receipt of the request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. See Gov't Code § 552.301(a), (e). In this instance, you have not submitted a

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<sup>1</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

copy of the written request or any information responsive to this request. Thus, the task force failed to comply with the procedural requirements of section 552.301.

The task force's failure to submit the request and the responsive information or a representative sample of the responsive information results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome this presumption, the task force must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In this instance, section 552.108 does not constitute a compelling reason to withhold information. *But see* Open Records Decision No. 586 at 3 (1991) (need of another governmental body to withhold information under predecessor to section 552.108 provided compelling reason to withhold information). Therefore, none of the requested information may be withheld pursuant to section 552.108. The applicability of section 552.102 of the Government Code can provide a compelling reason for non-disclosure under section 552.302; however, you have not submitted any information that you claim is excepted from disclosure under section 552.102. Thus, we have no basis to conclude that there is any compelling reason to withhold any information under this exception. Thus, we have no choice but to order the requested information released per section 552.302. *But see* Open Records Decision No. 670 (2001) (stating that governmental body may withhold peace officer's personal information from disclosure under section 552.117(a)(2) without necessity of requesting decision on that information from attorney general). *See also* Open Records Decision No. 673 (2001) (discussing types of previous determinations issued by this office). If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.<sup>2</sup>

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

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<sup>2</sup>To the extent the requested information includes the identities of undercover officers that the task force believes must be withheld, the procedures set out in sections 552.324 and 552.353 of the Act are available to the task force.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 232437

c: Mr. Scott Henson  
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