



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2006

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

OR2006-00207

Dear Ms. DeLuca:

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# 239912.

The College Station Police Department (the "department") received a request for 1) any "use of force" reports since January 1, 2001; 2) any reports since January 1, 2001 where officers came into contact with any person on whom a weapon was used; 3) custodial death reports involving a person on whom a weapon was used since January 1, 2001; 4) any reports of training injuries sustained by officers involving weapons; and 5) any policies regarding the department's use of force. You inform us that the department does not maintain information responsive to items 3 and 4, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

---

<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. The department asserts that Exhibits C12 through C15 are confidential pursuant to section 58.007. Upon review, we find that Exhibits C13 through C15 are law enforcement records of a juvenile engaged in delinquent conduct that occurred after September 1, 1997. *See* Fam. Code § 51.03 (defining "delinquent conduct"). Accordingly, the department must withhold Exhibits C13 through C15 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, Exhibit C12 is not a juvenile law enforcement record. As such, Exhibit C12 may not be withheld under section 552.101 in conjunction with section 58.007.

We note, however, that the Exhibit C12 contains information that is protected from disclosure under section 552.101 in conjunction with common law privacy.<sup>3</sup> Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release

---

<sup>3</sup> Section 552.101 also encompasses the doctrine of common-law privacy.

would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that the name of the juvenile offender in Exhibit C12 is protected under common law privacy. We therefore determine that the department must withhold the juvenile's name, which we have marked, pursuant to section 552.101 of the Government Code. *See Open Records Decision No. 394* (1983); *cf.* Fam. Code § 58.007.

The department claims section 552.108 for the remaining information, which provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An 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 is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a), (b). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See Gov't Code §§ 552.108(a)(1), (a)(2), .301(e)(1)(A); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Further, a governmental body claiming section 552.108(a)(2) must demonstrate that the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. We note that section 552.108 is generally not applicable to internal administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.),

*Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). Exhibits C1 through C11 are the department's use of force reports and are administrative records. Although we are cognizant of the fact that use of force investigations are based on an underlying arrest or detention, the focus of these investigations is on the propriety of the officer's conduct, not the underlying arrests. You do not state, nor does it appear, that Exhibits C5 through C11 relate to a criminal investigation into the officer's conduct. Moreover, these exhibits only detail routine investigative techniques. *See Open Records Decision No. 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). Accordingly, we conclude that the department may not withhold Exhibits C5 through C11 under section 552.108.

However, the underlying criminal investigation referred to in Exhibits C1 through C4 is currently pending. You further assert that release of these administrative records, which detail the arrest, would interfere with pending criminal investigation because "it would allow the public, including the defendant, to review the police report before the officers have even presented the case to the prosecutor's office for review." Based upon this representation, we find that the department has demonstrated the applicability of section 552.108(a)(1) to Exhibits C1 through C4. *See generally 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).

However, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See Open Records Decision No. 127 (1976)* (summarizing types of information considered to be basic information). Thus with the exception of basic information, the department may withhold Exhibits C1 through C4 under section 552.108.

We also note that Exhibit C2 contains the arrestee's social security number. Section 552.147 of the Government Code<sup>4</sup> provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the arrestee's social security number under section 552.147.<sup>5</sup>

---

<sup>4</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

<sup>5</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Turning to your remaining argument, section 552.108(b) may be applicable to internal records of a law enforcement agency, provided the law enforcement agency reasonably explains how and why release of the information at issue 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.) (section 552.108(b)(1) exception 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 law enforcement efforts). This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques or procedures. *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 predecessor to section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (predecessor to section 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). To claim this exception, a governmental body must explain how and why release of the requested information would interfere with law enforcement and crime prevention. Gov't Code §§ 552.108(a)(1), (b)(1), .301; 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 No. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under predecessor to section 552.108).

You state that the information in Exhibits C16 through C21 relates to the department's policies as they relate to weapons and claim that release of the information could expose the officers to substantial danger and interfere with the department's law enforcement functions. Based on your arguments and our review of Exhibits C16 through C21, we find that release of portions of the information at issue would interfere with law enforcement. Thus, the department may withhold the information we have marked in Exhibits C16 through C21 under section 552.108(b). However, the remaining information relates to generally known policies and procedures, and the department has not explained how its release would interfere with law enforcement. Accordingly, the remaining information in Exhibits C16 through C21 must be released.

In summary, the department must withhold Exhibits C13 through C15 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the juvenile's name in Exhibit C12, which we have

marked, pursuant to section 552.101 in conjunction with common law privacy. With the exception of basic information, the department may withhold Exhibits C1 through C4 under section 552.108(a)(1). The department must withhold the arrestee's social security number under section 552.147. The department may withhold the information we have marked in Exhibits C16 through C21 under section 552.108(b). The remaining information must be released.

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, 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,

A handwritten signature in black ink, appearing to read "José Vela III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 239912

Enc. Submitted documents

c: Richard Hoar  
C/O Light of Day Project  
Freedom of Information Foundation of Texas  
400 S. Record St., Suite 240  
Dallas, Texas 75202  
(w/o enclosures)