ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2006

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2006-02810

Dear Ms. Grace:

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# 244461.

The Austin Police Department (the "department") received two requests from the same requestor for the following: (1) dates of employment and duty status of three named officers; (2) all use of force reports related those officers; and (3) the in-car video and audio recordings related to a specified traffic stop. You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code 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[.]
> >
> > . . .

> (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) or (b)(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).

In this instance, you state, and provide documentation showing, that the submitted videotape and use of force reports relate to a pending criminal investigation of the named officers for official oppression. Based on your representations and our review of the information at issue, we agree that the release of the submitted videotape 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). Accordingly, we conclude that the submitted videotape may be withheld pursuant to section 552.108(a)(1). However, with regard to the use of force reports, we find that they reveal virtually no information about the underlying investigation that would not be released as part of basic information. *See* Gov't Code § 552.108(c)(stating that basic information may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Additionally, we note that these use of force reports only discuss routine investigative techniques. *See* Open Records Decision No. 252 at 3 (1980) (governmental body did not meet burden under section 552.108 because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). As the department has failed to explain how release of the submitted use of force reports would interfere with the detection, investigation or prosecution of crime, the department may not withhold them under section 552.108. As you make no further arguments against disclosure for this information, it must be released.

In summary, the submitted videotape may be withheld pursuant to section 552.108(a)(1) of the Government Code. The remaining information 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, 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,

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 244461

Enc. Submitted documents

c: Mr. Tony Plohetski
Austin American-Statesman
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(w/o enclosures)