



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 5, 2006

Lt. Gary Howard  
Lakeview Police Department  
98 Lakeshore Drive  
El Lago, Texas 77586-6136

OR2006-14227

Dear Lt. Howard:

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#266008.

The Lakeview Police Department (the "department") received a request for records pertaining to a specified incident involving a named officer, including (1) radar equipment maintenance records, (2) callibration records, (3) training equipment, (4) duty hours for the named officer prior to and on the specified date, (5) records of complaints, lawsuits, and judgments against the officer, (6) prior speeding tickets issued by the department and the officer, and (7) the officer's notes.<sup>1</sup> 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.

We first note that the submitted information does not include records of complaints, lawsuits or judgments against the officer or the officer's notes. We therefore assume that the department has released any information that is responsive to those aspects of the request, to the extent that such information existed when the department received the request. If not, then the department must release any such information at this time. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

Section 552.108 of the Government Code provides in relevant part the following:

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<sup>1</sup>You inform us that the department sought and received clarification from the requestor. *See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).*

(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)(1), (b)(1). Section 552.108 protects certain specific types of law enforcement information. Section 552.108(a)(1) is applicable if the release of the information would interfere with a pending criminal investigation or prosecution. *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). Section 552.108(b)(1) protects internal records of a law enforcement agency, the release of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws).

A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See Gov't Code § 552.301(e)(1)(A); Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you have failed to demonstrate how the release of the submitted information would interfere with the investigation or prosecution of crime or would otherwise undermine the department's law enforcement efforts. We therefore conclude that the department may not withhold any of the submitted information under section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the submitted 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,



Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/krl

Ref: ID# 266008

Enc. Submitted documents

c: Mr. Michael Klamph  
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(w/o enclosures)