



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2007

Mr. Leonard V. Schneider  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2007-07431

Dear Mr. Schneider:

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#281131.

The City of Magnolia (the "city"), which you represent, received a request for the following categories of information pertaining to two named individuals: (1) number of hours worked; (2) number of overtime hours each day; (3) location of work; (4) number of vacation days or compt time used and (5) "how many units allowed to eat in Tomball." You state that you will release some of the responsive information to the requestor. You state that the city has no responsive documents with regard to items (3) and (5) of the request for information.<sup>1</sup> You further inform us that the city will redact social security numbers in the submitted records pursuant to sections 552.1175 and 552.147 of the Government Code.<sup>2</sup> You claim

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

<sup>2</sup>This office has issued a previous determination allowing all governmental bodies to redact certain personal information of peace officers under section 552.117(a)(2) of the Government Code. See Open Records Decision No. 670 (2001) (previous determination that governmental body may withhold home address, home telephone number, personal cellular phone number, personal pager number, social security number and information that reveals whether individual has family members, of any individual who meets definition of "peace officer" set forth in article 2.12 of Texas Code of Criminal Procedure without necessity of requesting attorney general decision as to whether exception under section 552.117(a)(2) applies). 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.

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 sample of information.<sup>3</sup>

Section 552.108(b)(1) of the Government Code excepts from disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 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).

The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would interfere with law enforcement because disclosure would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (statutory predecessor was 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). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

A governmental body that relies on section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). You assert that the release of the requested time sheets would interfere with law enforcement by permitting the public to know the schedules and locations of law enforcement officers. However, having considered your arguments, we conclude that you have failed to explain

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<sup>3</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.

how or why release of any of the information at issue would interfere with law enforcement or crime prevention. Accordingly, the city may not withhold any of the submitted information under section 552.108(b)(1). As you make no other arguments against disclosure and the information is not otherwise confidential, the city must release the submitted information 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).

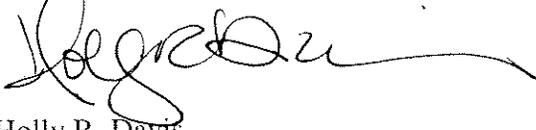
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read 'Holly R. Davis', with a long, sweeping horizontal line extending to the right.

Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/eeg

Ref: ID# 281131

Enc. Submitted documents

c: Mr. Richard Anderson  
P.O. Box 64  
Magnolia, Texas 77353  
(w/o enclosures)