



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 28, 2008

Ms. Patricia Fleming  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2008-11880

Dear Ms. Fleming:

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# 320124.

The Texas Department of Criminal Justice (the "department") received a request for the department's BP-03.85 "Offender Visitation" and "Offender Visitation Plan." You claim that the requested 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 have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the department previously released the requested information to the public. We note that section 552.007 of the Government Code prohibits selective disclosure of information. Thus, a governmental body cannot withhold information from a requestor that it has voluntarily made available to another member of the public unless the information is confidential by law. *See id.* § 552.007(b). As a general rule, if a governmental body releases information to one member of the public, the Act's exceptions to disclosure are waived unless the information is deemed confidential under the Act. Open Records Decision Nos. 490 (1988), 400 (1983). Although protection for information covered by the Act's permissive exceptions, such as sections 552.103

and 552.108 can be waived, protection for information deemed confidential by law ordinarily is not waived through "selective disclosure." See ORD Nos. 490, 400.

In this case, if the department previously released any of the submitted information to a member or members of the public, the department cannot now withhold such information under section 552.108. Accordingly, to the extent the department has not released the submitted information to the public, we address the department's arguments for withholding the submitted information.

Section 552.108(b)(1) excepts from public disclosure "[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1); see also *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet. h.) Section 552.108(b)(1) protects 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 would interfere with law enforcement because disclosure would hamper Texas Department of Public Safety's efforts to detect forgeries of drivers' licenses), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. See Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

A governmental body that claims section 552.108(b)(1) must sufficiently explain how and why release of the information at issue would interfere with law enforcement and crime prevention. See Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). The department states that the submitted information contains information on how to infiltrate and manipulate the department's data bases and mainframe computer. The department contends that release of the information at issue "would be like providing a roadmap to any would-be hacker with a motive. . . to delete information damaging to an offender's visitation privileges." Based on your arguments and our review of the information at issue, we agree that the release of the information we have marked would interfere with law enforcement and crime prevention. Accordingly, the department may withhold this marked information from disclosure under section 552.108(b)(1) of the Government Code. However, after reviewing the remaining information and considering your arguments, we conclude that the department

has failed to demonstrate how release of this information would interfere with law enforcement and crime prevention. Therefore, the remaining information may not be withheld under section 552.108(b)(1) and 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/jh

Ref: ID# 320124

Enc. Submitted documents

c: Ms. Yolanda Torres  
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(w/o enclosures)