ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2008

Ms. Myrna S. Reingold
Galveston County Legal Department
County Courthouse
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2008-13979

Dear Ms. Reingold:

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# 324354.

Galveston County (the "county") received a request for certain records related to a request for information dated September 4, 2007, directed to the Galveston County Sheriff's Office (the "sheriff") from the present requestor. You state that a portion of the submitted information has previously been released to the requestor. You assert that the present request for information has not triggered the Act. Alternatively, you claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We begin with your contention that the present request did not trigger the Act because the county is not the custodian of records for this information and it should be requested from the sheriff. However, you explain that the county provided legal services to the sheriff regarding the prior request for information. Having considered your arguments and reviewed the documents at issue, we find that the information at issue was collected and is maintained by the county in connection with the transaction of official county business. Accordingly, we conclude that the information at issue is public information under section 552.002 that must be released unless it falls within an exception to public disclosure. *See* Gov't Code § 552.002(a) ("public information" is information collected, assembled, or maintained under law or ordinance or in connection with transaction of official business by a governmental body), .021. Thus, the instant request did trigger the Act and we will address the county's arguments against the disclosure of the submitted information.

You claim that the remaining requested information, which consists of the sheriff's jail shift rosters and jail inmate count sheets, is excepted from disclosure under subsection 552.108(b)(1) of the Government Code. Section 552.108 provides, in part:

> (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(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in [a law enforcement agency], avoid detection, jeopardize officer safety, and generally undermine [law enforcement] efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). 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) (holding that predecessor to section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution).

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(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 Nos. 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), 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).

You state that the submitted information shows details concerning the sheriff and the county jail, including "shift change information, the assignment/placement of officers/deputies to the pod and other locations in the county jail, the assignment of deputies/officers to rover, and the number of inmates at the various locations within the jail." Furthermore, you explain that release of the information contained in the shift rosters would impair the security of the jail by providing an advantage to inmates in planning an escape. You also argue that release of the shift roster information could endanger the safety of sheriff's officers, deputies, and other persons within the jail and the criminal justice center as a whole. Based on your arguments and our review of the submitted information, we agree that the release of the submitted shift rosters would interfere with law enforcement. Accordingly, we conclude that the county may withhold the submitted shift rosters under section 552.108(b)(1) of the Government Code. However, you have not provided an explanation of how the submitted

inmate count sheets would interfere with law enforcement and crime prevention. Thus, you have failed to establish the applicability of section 552.108(b)(1) to the submitted inmate count sheets and they may not be withheld on that basis.

You also argue that the remaining information is excepted under section 552.101 of the Government Code. Section 552.101 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 information made confidential by other statutes, such as section 418.182 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.182 provides:

> (a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182. The fact that information may be related to a governmental body's security concerns does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). We note that section 418.182 pertains to security systems used to protect public or private property from terrorism. You have made no arguments explaining how the submitted inmate count sheets relate to the specifications, operating procedures, or location of a security system used to protect public or private property from terrorism. Accordingly, you have failed to demonstrate the applicability of section 418.182 to the submitted inmate count sheets. Therefore, the county may not withhold the submitted inmate count sheets under section 552.101 of the Government Code.

In summary, the county may withhold the submitted shift rosters under section 552.108(b)(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 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).

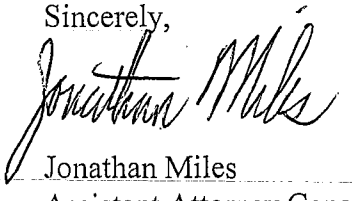
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 324354

Enc. Submitted documents

c: Mr. Danny Royce Murphy
P.O. Box 87491
Houston, Texas 77287
(w/o enclosures)