



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2009

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-05857

Dear Ms. Chang:

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# 341869.

The Houston Police Department (the "department") received a request for the following categories of information: 1) the number of accidents in 2008 involving police cars; 2) the number of accidents where police cars were totaled; 3) the number of injuries suffered in all accidents involving police cars in 2008; 4) the number of deaths suffered in all accidents involving police cars in 2008; 5) the costs associated with each separate crash; and 6) a description of the training that police officers are given regarding the operation of police cars, including any videos. You state the department will make information responsive to categories one through five available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.119 of the Government Code, and you claim some information is protected by copyright law.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this

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<sup>1</sup>Although you raise section 552.111 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. See Gov't Code §§ 552.301, 552.302.

office to decide whether information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code § 552.301(a), (b)*. The department received the request for information on February 13, 2009. Although you timely raised section 552.108 of the Government Code, you did not raise section 552.119 until March 5, 2009. Thus, with respect to section 552.119, the department failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Because section 552.119 of the Government Code can provide a compelling reason to withhold information, we will consider your argument concerning this exception, along with your timely raised argument under section 552.108 of the Government Code.

You assert that Exhibits 2 and 3 are 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) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law

enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under predecessor to section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (predecessor to section 552.108 is 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).

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.*, ORDs 531 at 2-3 (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 (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 Exhibits 2 and 3 consist of internal records or notations regarding officer driving training, including techniques for stopping a vehicle during a motor vehicle pursuit. You explain that release of this information would provide an advantage to criminal suspects "to counter or avoid apprehension and risk the safety of officers and the public." Additionally, you have submitted to this office an affidavit from an officer with the department's training division, which further explains how release of some of the submitted information would impair law enforcement and endanger the safety of officers and the public. Based on your arguments, the affidavit, and our review of the submitted information, we agree that the release of Exhibit 3 and portions of Exhibit 2 would interfere with law enforcement. Accordingly, we conclude that the department may withhold the portions of Exhibit 2 we have marked and Exhibit 3 in its entirety under section 552.108(b)(1) of the Government Code.<sup>2</sup> We find that the department has not demonstrated how release of the remaining information would interfere with law enforcement, and none of it may be withheld under section 552.108(b)(1).

Next, you state Exhibit 4 is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do

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<sup>2</sup>As our ruling on this issue is dispositive, we do not address your argument under section 552.119 of the Government Code.

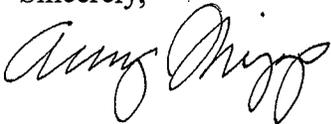
so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Thus, any copyrighted information may only be released in accordance with copyright law.

In summary, the department may withhold the information we have marked in Exhibit 2 and Exhibit 3 under section 552.108(b)(1) of the Government Code. The remaining information must be released to the requestor, but any copyrighted information may only be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/rl

Ref: ID# 341869

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)