



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2009

Ms. Katherine R. Fite
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2009-11349

Dear Ms. Fite:

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# 353894.

The Office of the Governor (the "governor") received a request for seized assets reports filed by the Texas Department of Public Safety (the "department") for 2007 and 2008. You claim that some of the requested information is excepted from disclosure under section 552.130 of the Government Code.¹ Additionally, you notified the department of its right to submit arguments to this office as to why the requested information should not be released.² The department has submitted arguments under section 552.108 of the Government Code. We have considered all the submitted arguments and reviewed the submitted information.

We begin with the department's claim under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from disclosure "[a]n internal record or notation of a law

¹Although you also state that "[a]ll other exceptions, §§ 552.101 through 552.1425 of the Government Code, are asserted," you have not submitted arguments in support of the applicability of any exception other than section 552.130. Accordingly, this decision addresses only the exception that you have claimed and argued. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why claimed exceptions apply to information at issue).

²*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

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 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). 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) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). 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 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The department claims that information it has marked in one of the submitted reports should be withheld under section 552.108(b)(1). The department states that the marked information identifies a device utilized for law enforcement purposes and that, by its description, the marked information identifies the capabilities the device provides to law enforcement. The department states that officers who utilize the device do not believe that the public is generally aware of its existence and functions. The department contends that disclosure of the acquisition of the device would diminish its effectiveness in discovering, thwarting, and interrupting criminal activity. Based on the department’s representations, we conclude that release of the information in question would interfere with law enforcement and crime prevention. The information in question, which we have marked, may therefore be withheld under section 552.108(b)(1).

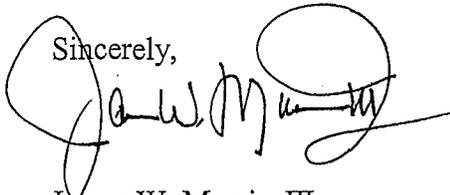
Next, we address the governor’s claim under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(2). We have marked Texas license plate and vehicle identification numbers that must be withheld under this exception. Although you believe that this exception is applicable to other information contained in the submitted documents, we find that none of the remaining information falls within the scope of section 552.130. Therefore, none of the remaining information may be withheld on that basis.

In summary: (1) the governor may withhold the information we have marked under section 552.108(b)(1) of the Government Code; and (2) the governor must withhold the information we have marked under section 552.130 of the Government Code. The rest of the submitted information must be released.

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, 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 353894

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001
(w/o enclosures)

