



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2009

Ms. Donna L. Clarke
Assistant Criminal District Attorney
County of Lubbock
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2009-14202

Dear Ms. Clarke:

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# 357763.

The Lubbock County Sheriff's Office (the "sheriff") received a request for three categories of information pertaining to a named sheriff employee. You state that you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108 and 552.111 of the Government Code. You also state, and provide documentation showing, that you notified the named employee of the request and of his right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why information should not be released).¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the sheriff has only submitted one document for our review. You state that you have submitted one responsive document to the requestor, yet the requestor requested three categories of information. Therefore, to the extent any additional responsive information existed at the time the sheriff received the request for information, we assume you have released it to the requestor. If you have not released any such information, you

¹As of the date of this decision, this office has received no correspondence from the individual in question.

must do so at this time. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if a governmental body concludes that no exceptions apply to the requested information, it must release information as soon as possible under circumstances).

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. We note and you acknowledge that the submitted memorandum pertains to the employment of a sheriff employee. After review of your arguments and the submitted information, we conclude that the information at issue pertains to routine personnel matters and does not constitute advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Therefore, the submitted information is not excepted from release under section 552.111.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked under section 552.108(a)(1) of the Government Code relates to pending criminal investigations. Based upon your representations and our review, we conclude you have established a portion of the information you have marked relates to pending criminal investigations. Accordingly, the sheriff may withhold the information we have marked under section 552.108(a)(1) of the Government Code. However, the remaining information you have marked only pertains to sheriff personnel matters, and you failed to establish that the release of this personnel information would interfere the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the sheriff may not withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.

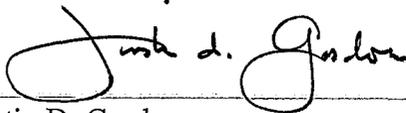
You assert that a portion of the remaining information is excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for 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[.]” *Id.* § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 at 710). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (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). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *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 not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. ORD 409 at 2 (1984). In this instance, you generally assert that the remaining information could “undermine the efforts of the [d]epartment to protect the citizenry” and “[compromise] the safety and security of the jail and [s]heriff[']s office as a whole.” However, we note and you acknowledge that the information at issue pertains to day to day administrative issues. Further, beyond conclusory assertions, you have not demonstrated how release of the remaining marked administrative information would interfere with law enforcement and crime prevention. Accordingly, the sheriff may not withhold the remaining marked information under section 552.108(b)(1) of the Government Code.

In summary, the sheriff may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jb

Ref: ID# 357763

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Donald Carter
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Lubbock, Texas 79424
(w/o enclosures)