



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 13, 2009

Mr. George E. Hyde  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2009-16169

Dear Mr. Hyde:

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# 361254.

The Victoria Police Department (the "department"), which you represent, received a request for information pertaining to Operation Border Star or the Local Border Security Program, including any information related to funding, reporting requirements, arrests and interdictions, the use of specified equipment, and policies and procedures. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code, which states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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<sup>1</sup>We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information contains completed reports. Pursuant to section 552.022(a)(1) of the Government Code, a completed report is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Consequently, the completed reports, which we have marked, may not be withheld under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.108, and 552.130, we will consider the applicability of these exceptions to the completed reports. Additionally, we will address all of the claimed exceptions for the information not subject to section 552.022.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2). Section 58.007 provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records[.]

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

*Id.* § 58.007(c). Upon review, we find a portion of the submitted information involves alleged juvenile delinquent conduct that occurred after September 1, 1997. *Id.* § 51.03(a) (defining “delinquent conduct”). It does not appear any of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.<sup>3</sup>

You claim section 552.108 of the Government Code for the entirety of the remaining information. Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Gov't Code § 552.108(a)(1), (b)(1).<sup>4</sup> A governmental body claiming subsections 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(1) protects information, the release of which would interfere with a particular criminal investigation or prosecution. Gov't Code § 552.108(a)(1).

You state the submitted information “*may* include information related to the arrest [sic] or narcotic possession, illegal immigration[,] abandoned vehicles, outstanding arrest warrants, etc.” Further, you state, “[*m*]any times, these incidents are active ongoing criminal investigations, and the release of this information would compromise the integrity of the investigation.” However, you do not explain specifically which portions of the submitted information are related to ongoing criminal investigations. Because you have failed to specify the portions of the submitted information that pertain to ongoing criminal investigations, we find the department has failed to meet its burden in explaining the applicability of section 552.108(a)(1) to any portion of the remaining information. *See id.* § 552.301(e)(1)(A) (governmental body has the burden of proving that the requested information must be withheld under the stated exception). Accordingly, we conclude the department may not withhold any portion of the remaining information, including the information subject to section 552.022(a)(1), under section 552.108(a)(1) of the Government Code.

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, 327 (Tex. App.—Austin 2002, no pet.) (section 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) (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 from Department of Public Safety would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 143 (1976)

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<sup>4</sup>Although you also quote subsections (a)(2) through (a)(4), (b)(2), and (b)(3), you have provided no arguments explaining the applicability of these subsections to the submitted information. *See* Gov't Code 552.301(e)(1)(A).

(disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state portions of the submitted information pertain to security and risk assessment information. You state release of the information will interfere with law enforcement by equipping criminals with guidance in how to tailor their behavior when encountering law enforcement. Further, you state release of the Asset Lay Down Reports, timesheets, Reporting Standards Guide, and Operation Order Guide will reveal law enforcement tactical strategies. You explain release of the use and positioning of officers will compromise officer safety and affect the ability of the department to detect and deter criminal activity. Upon review of your arguments and the submitted information, we find the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code.<sup>5</sup>

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, registration, or personal identification document issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a). We note section 552.130 does not make information regarding the state of issuance confidential because in order for section 552.130 to be applicable, the motor vehicle information must be issued by an agency of the State of Texas. Additionally, section 552.130 does not apply to out of state motor vehicle record information. Upon review, portions of the information you have marked do not relate to Texas motor vehicle record information and it may not be withheld under section 552.130. Further, we are unable to determine if other portions of the motor vehicle record information you have marked were issued by the State of Texas. Thus, we must rule conditionally for this information. To the extent the motor vehicle record information we have noted was issued by the State of Texas, the department must withhold this information under section 552.130 of the Government Code. If the motor vehicle record information we have noted was not issued by the State of Texas, then such information must be released. In either case, the department must withhold the Texas issued motor vehicle record and personal identification information we have marked under section 552.130.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with section 58.007 of the Family Code. The department may withhold the information we have marked under section 552.108(b)(1) of the Government

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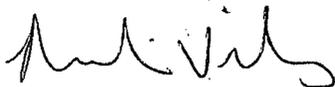
<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Code. If the motor vehicle record information we have noted was issued by the State of Texas, then the department must withhold this information and the remaining Texas issue motor vehicle record information and personal identification information we have marked under section 552.130 of the Government Code. If the motor vehicle record information we have noted was not issued by the State of Texas, then the department must only withhold the Texas issued motor vehicle record information and the personal identification information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>6</sup>

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

Sincerely,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jb

Ref: ID# 361254

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>6</sup>We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.