



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 14, 2013

Ms. Patricia Fleming  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2013-04300

Dear Ms. Fleming:

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# 481305.

The Texas Department of Criminal Justice (the "department") received a request for the security memorandum SM-05.07 in effect in March 1998, which was referenced on page 18 of the February 1998 death row plan; the current version of the department's policy and procedures regarding death row escort procedures, including types of restraints used and number of escorts employed; current version of the department's death row plan; the document providing information regarding the current and year 1998 conditions of confinement for female death row inmates, including description and dimensions of a cell, descriptions of furnishings, fixtures, cell doors, and windows; current and 1998 operative documents providing classification level, policies and procedures applicable to female death row inmates who are granted work capable status but choose not to work; and the department's current and 1998 operative policy regarding the number of family and attorney contact visits permitted to death row inmates. You state you have released some information to the requestor. You claim a portion of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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[.]” 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 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.). To prevail on its claim that subsection 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). 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 of the Government Code 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.*, ORDs 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 the information you seek to withhold contains information pertaining to the escort procedures applied to death row offenders. You contend disclosure of this information would reveal the department’s procedures regarding these inmates which could jeopardize the safety of correctional officers and inmates. You further contend release of this information could increase the risk of correctional officers being bribed and contraband being smuggled to death row inmates. Based on your arguments and our review, we agree that release of the information you seek to withhold would interfere with law enforcement. Accordingly, the department may withhold the information you have indicated under section 552.108(b)(1). As no further exceptions to disclosure are raised, the department must release the remaining information.

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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 481305

Enc. Submitted documents

c: Requestor  
(w/o enclosures)