TEXAS

February 1, 2000

Mr. Eddie L. Martin
City Attorney's Office
City of Denton
215 East McKinney
Denton, Texas 76201

OR2000-0336

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131205.

The City of Denton (the "city") received a request for the police department's "instruction and procedures manuals for your police officers." You claim that the requested 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 provides in pertinent part as follows:

> (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[.]

Gov't Code § 552.108(b)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has held that section 552.108 excepts portions of use of force procedures that state detailed guidelines on the use of force. Open Records Decision No. 531 (1989). However, portions of the procedures that relate to generally known common law rules, constitutional limitations, or Penal Code provisions are deemed public information. *Id.*

You explain that the requested materials "are procedures for internal use to provide guidelines and training for department members." Moreover, you explain that release of the marked information would interfere with law enforcement in that it would generally enable the public, particularly criminals, to disrupt police procedures, take advantage of police restrictions regarding the use of force and other matters, and to thwart police responses. After a review of your arguments and the submitted information, we agree that you may withhold most of the highlighted portions of the submitted information. However, we are not convinced that release of Reference Number 88-14 (Traffic Law Enforcement) would interfere with law enforcement. You claim that release of this policy "could lead to escalation of persons stopped as they would know the limitations and constraints that the policy dictates to the officer." We fail to understand how the "escalation of persons stopped" would interfere with law enforcement. Furthermore, we do not read the highlighted traffic policy information as conveying significant limitations on police officers' authority. Therefore, we find that the marked information in Reference Number 88-14 does not fall under section 552.108, and accordingly, the city must release this information. The city may withhold the remaining highlighted information under section 552.108(b).

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).
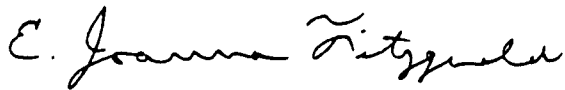
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at

877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 131205

Encl: Submitted documents

cc: Mr. Jeff Cagle
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        (w/o enclosures)