



December 21, 2000

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
401 W. Belknap
Fort Worth, Texas 76196-0201

OR2000-4825

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143134.

The Tarrant County Sheriff's Department (the "department") received a request for information pertaining to the department's "use of force" policies and procedures. Specifically, the requestor seeks all "policies, procedures, standard operating procedures, memos, manuals, general orders, guidebooks and/or guidelines related in any way to the following:"

1. Use of force in the department's jail;
2. Use of pepper spray, mace, or other non-lethal weapons;
3. Use of choke type or any other holds;
4. Use of restraint chairs and any similar devices;
5. Use of S.O.R.T. Team, cell extract unit or similarly named unit;
6. Detention manual or similarly titled guide; and
7. All invoices, receipts and/or purchase orders that show the cost and number of restraint chairs/devices bought and used by the department.

You claim that 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 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body “must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.” Gov’t Code § 552.301. Otherwise, the requested information is presumed to be public information. Gov’t Code § 552.302.

You state that the department received the request for information on October 17, 2000 and refer us to the submitted copy of the written request which shows the department’s date of receipt stamp. However, the request for information indicates that it is actually an amendment of a previous request dated September 18, 2000. That previous request was submitted to this office along with the “amended” one. While the two requests are very similar, the amended request contains two additional request items: 1) a detention manual or similarly titled guide; and 2) invoices, receipts, and/or purchase orders that show the cost and number of restraint chairs/devices bought and used by the department. You have informed this office that no detention manual or similarly titled guide exists within the department’s possession. The Public Information Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Nos. 605 at 2 (1992), 572 at 1 (1990), 558 at 1 (1990), 362 at 2 (1983). Accordingly, the department has no obligation to release such a manual. As for the requested invoices, receipts, and/or purchase orders, because you have not submitted them for our review, we assume that the department has released this information to the extent such information exists in the department’s possession. *See* Gov’t Code §§ 552.301, .302. Because the submitted information does not include information responsive to the two additional request items contained in the amended request, we consider all of the documents that have been submitted to this office to be equally responsive to both requests for information.

You provide us with no factual background regarding the first request for information, however, it does not appear that the department asked for an attorney general decision or that the department released the requested information to the requestor. We note that the Public Information Act contemplates a tolling of the ten days during the interval in which a governmental body and a requestor are communicating in good faith to clarify or narrow a request. *See* Open Records Decision No. 663 (1999).¹ However, in this case, you neither state that the department attempted to negotiate with the requestor regarding the scope of the earlier request, nor have you submitted correspondence evidencing such negotiations. In the absence of any evidence or representations to the contrary, we must assume that no

¹However, this does not mean that the clarification or narrowing process results in an additional ten full days from the date the requestor responds to the request for clarity. While governmental bodies should be encouraged to seek clarification and narrowing of a request, they should also be encouraged to do so promptly, that is, as early as possible within the statutory ten-day deadline. Therefore, the ten-day deadline is tolled during the clarification or narrowing process but resumes upon receipt of the clarification or narrowing response. *See id.*

negotiations, and therefore no tolling, took place. Therefore, we find that the department missed its ten-day deadline in regard to the original request for information dated September 18, 2000. *See* Gov't Code § 552.301. Consequently, absent a compelling reason to withhold the requested information, the information must be released. *See* Gov't Code § 552.302.

This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). You argue that the submitted information is excepted under section 552.108 of the Government Code. However, your argument invoking section 552.108 does not constitute a compelling reason to withhold the submitted information. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived); *but see* Open Records Decision No. 586 (1991) (when a governmental body fails to timely seek an attorney general decision under the Public Information Act, the need of *another* governmental body may provide a compelling reason for withholding the requested information). Moreover, having reviewed the submitted information, we find no compelling reason to withhold it. Consequently, the department must release the submitted information to the requestor.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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/er

Ref: ID# 143134

Encl: Submitted documents

cc: Mr. Bennett Cunningham
Investigative Reporter
CBS 11
10111 N. Central Expressway
Dallas, Texas 75231
(w/o enclosures)