



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2005

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P. O. Box 368  
Houston, Texas 77001-0368

OR2005-09644

Dear Ms. Chang:

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# 234856.

The Houston Police Department (the "department") received two requests for a copy of its use of force policy.<sup>1</sup> 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.

You assert that the use of force policy you have submitted for review, department General Order No. 600-17, issue date May 17, 2005, is excepted from disclosure under subsection 552.108(b)(1) of the Government Code. Section 552.108 provides, in part:

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<sup>1</sup>We note that one of the requests received by the department seeks information pertaining in part to the department's policies with regard to tasers. The department submitted a request for a ruling to this office in response to that request which this office assigned identification number 235179. You inform us that the department is releasing some information responsive to that request, and that the remaining information at issue in that request is the same as the information at issue in the instant request assigned identification number 234856. Therefore, we are combining our files with regard to these matters into one ruling with identification number 234856.

(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 [required public disclosure] if:

(1) 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 law enforcement agency], avoid detection, jeopardize officer safety, and generally undermine [law enforcement] efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques or procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under predecessor to section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (predecessor to 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).

To claim this exception, a governmental body must explain how and why release of the requested information would interfere with law enforcement and crime prevention. Gov't Code §§ 552.108(a)(1), (b)(1), .301; Open Records Decision No. 562 at 10 (1990). Generally known policies and techniques may not be withheld under section 552.108. *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 are not protected under predecessor to section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

You state that the submitted use of force policy contains "specific guidelines for police officers confronted by violence or threatened violence when effecting an arrest, protecting the public safety, or the safety of the arresting officer." Furthermore, you explain that release of this information would provide an advantage to criminal suspects during confrontations with police officers. You also argue that release of this information could increase the

chance of injury to police officers and other persons during confrontations with criminal suspects. You have also submitted to this office an affidavit from an officer with the department, which further explains how release of the information at issue would impair an officer's ability to safely handle confrontations with criminal suspects. Based on your arguments and our review of the submitted information, we agree that the release of most of the submitted use of force policy would interfere with law enforcement. Accordingly, we conclude that the department may withhold the portions of the submitted information we have marked under section 552.108(b)(1) of the Government Code. We find that the department has not demonstrated how release of the remaining information would interfere with law enforcement.<sup>2</sup> Thus, the remaining submitted information must be released 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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

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<sup>2</sup>As we are able to make this determination, we need not address the applicability of section 552.108(a)(1) to the submitted information.

body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Office of the Attorney General 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 234856

Enc. Submitted documents

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