



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2005

Mr. James M. Kuboviak
County Attorney
Brazos County
300 26th Street, Suite 325
Bryan, Texas 77803-5327

OR2005-11553

Dear Mr. Kuboviak:

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# 238969.

December 22, 2005The Brazos County Sheriff's Office (the "sheriff's office") received a request for:

1. "Copies of any 'use of force' report or other record documenting the use of any weapon, including Tasers, stun guns or bean bag shotguns, by any officer in [the sheriff's office] since Jan. 1, 2000 . . .
2. Copies of any offense or incident report documenting the circumstances under which your officers came into contact with any person on whom a weapon was used since Jan. 1, 2000.
3. Any custodial death report filed by or on behalf of your office documenting the death of any person in your custody on whom a weapon was used since Jan. 1, 2000.
4. Copies of any reports of training injuries sustained by officers or employees involving weapons, including Tasers, stun guns and beanbag shotguns.

5. Copies of any policies regarding your department's use of force, including force involving Tasers, stun guns and beanbag shots."

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.

As a preliminary matter, we note that the submitted information consists only of the sheriff's office "Policy Governing Use of Force." You have not submitted information responsive to parts 1, 2, 3 or 4 of the request. We therefore assume that, to the extent it exists, any information maintained by the sheriff's office that is responsive to these portions of the request has been released to the requestor. If not, the sheriff's office must release such information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that Gov't Code § 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). We now address your arguments with respect to the submitted information.

Section 552.108 provides, in part:

(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 detailed guidelines for the intermediate use of force and in the use of deadly force." You argue that "[r]elease of the policy would reveal the techniques by which and the circumstances under which sheriff's office personnel are directed to use particular types of force and prohibited from using particular types [of] force." You also argue that release of this information "puts law enforcement personnel at risk by permitting a private citizen to anticipate weaknesses in the way sheriff's officers enforce the law" and would undermine an officer's efforts to maintain law and order in the community.

Based on your arguments and our review of the submitted information, we agree that the release of some of the submitted use of force policy would interfere with law enforcement, specifically: part III, sections A.2.a. and A.3.a.; part IV, sections A, B, C, D, E and F; part V, section C; Attachment #1; and Attachment #2. Accordingly, we conclude that the sheriff's office may withhold these portions of the submitted information, which we have marked, under section 552.108(b)(1) of the Government Code. We find that the sheriff's office has not demonstrated how release of the remaining information would interfere with law enforcement. 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 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# 238969

Enc. Submitted documents

c: Mr. Joel Brilliant
The University of North Texas
c/o Light of Day Project
Freedom of Information Foundation of Texas
400 S. Record Street, Suite 240
Dallas, TX 75202
(w/o enclosures)