



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 21, 2008

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2008-14370

Dear Ms. Camp-Lee:

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#325253.

The City of Round Rock (the "city"), which you represent, received a request for four categories of information relating to taser usage by the Round Rock Police Department. You state that you have released some of the requested information. You claim that the remaining 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.

Initially, you indicate that the submitted information was provided to the city in a confidential context. We note that information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests confidentiality. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Essentially, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Thus, unless the information at issue comes within an exception to disclosure, it must be released despite any expectation or agreement to the contrary.

Section 552.108(b)(1) 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: (1) release of the internal record or notation would interfere with law enforcement or prosecution." This provision 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 a claim that section 552.108(b)(1) exempts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Rather, 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). In addition, 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 law enforcement exception), 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). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. See Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

You claim that release of the submitted information would interfere with the detection, investigation, or prosecution of crime. You inform us that this information consists of use-of-force policies and procedures from other law enforcement agencies that include specific guidelines for police officers confronted by violence or threatened violence when affecting 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, and may increase the chance of injury to police officers and others during confrontations with criminal suspects. Having considered your arguments and reviewed the submitted documents, we find that you have established that portions of the submitted information relate to detailed procedures, the release of which would interfere with law enforcement. Accordingly, the city may withhold the information that we have marked under section 552.108(b)(1) of the Government Code. However, we find that the city has not demonstrated how release of the remaining information would interfere with law enforcement. Thus, none of the remaining information may be withheld pursuant to section 552.108(b)(1) of the Government Code, and 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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/jb

Ref: ID#325253

Enc. Submitted documents

c: Mr. Jeff Edwards
Whitehurst, Harkness, Ozmun & Brees
P.O. Box 1802
Austin, Texas 78767
(w/o enclosures)