



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2009

Mr. Leonard V. Schneider
Attorney for the City of Splendora
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2009-06184

Dear Mr. Schneider:

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# 342671.

The Splendora Police Department (the "department"), which you represent, received a request for the department's policy on the use of tasers. You claim that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, you indicate that the information you have crossed out in the submitted information is not responsive to the instant request for information because it does not pertain to the use of tasers. Instead, that information pertains to unrelated policies of the department. Upon review, we agree that the information you have crossed out is non-responsive. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release that information in response to the request.

¹Although you also raise section 552.101 of the Government Code, you do not present any arguments against disclosure under that section. We note this office has concluded section 552.101 does not encompass other exceptions found in the Act.

Section 552.108 of the Government Code provides in pertinent 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 section 552.108(b)(1), 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(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.*, ORD 531 at 2-3 (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 (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 responsive information contains specific guidelines for police officers regarding the procedure to be followed when using and handling tasers, as well as other guidelines to advise police officers in their decision-making with respect to the use of tasers as a means of force. 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 during confrontations with criminal suspects. You have also submitted to this office an affidavit from the department's police chief, 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 these arguments and our review, we find that the release of portions of the responsive information would interfere with law enforcement. Accordingly, the department may withhold the information we have marked in the responsive information under section 552.108(b)(1) of the Government Code. We find, however, that the department has not demonstrated that release of the remaining information would interfere with law enforcement. Thus, the remaining responsive information is not excepted from disclosure under section 552.108. As no further exceptions are raised, the remaining responsive information must be released to the requestor.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 342671

Enc. Submitted documents

c: Requestor
(w/o enclosures)