



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2010

Ms. Evelyn W. Njuguna
Assistant City Attorney
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77251-1562

OR2010-07709

Dear Ms. Njuguna:

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# 380790 (PIR No. 16871).

The Houston Police Department (the "department") received a request for twenty-five categories of information pertaining to a named police officer, department policies and procedures, and the police-involved shooting death of a named individual. You state some of the requested information has been released. You claim 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 representative sample of information.¹

You inform us some of the requested information regarding the policies and procedures on the use of taser weapons was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2006-10582 (2006), 2007-15167 (2007), and 2009-12619 (2009). In each of those rulings, we concluded the department may withhold certain information pertaining to the department's policies and procedures on the

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

use of taser weapons by police officers under section 552.108(b)(1) of the Government Code. You state the law, facts, and circumstances on which the prior rulings were based have not changed; thus, we agree the department may continue to rely on those rulings as previous determinations and withhold or release the policies and procedures on the use of taser weapons in accordance with Open Records Letter Nos. 2006-10582, 2007-15167, and 2009-12619. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You further inform us most of the remaining requested information was also the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-15938 (2009). You acknowledge the law, facts, or circumstances have changed regarding the portions of the requested information that pertain to the investigation of the police-involved shooting. Therefore, the department may not rely on Open Records Letter No. 2009-15938 for the requested information pertaining to the investigation of the police-involved shooting. However, you state the law, facts, and circumstances on which the prior ruling was based have not changed in regards to the remaining information requested in the prior ruling. Accordingly, we agree the department may continue to rely on Open Records Letter No. 2009-15938 as a previous determination and withhold or release any identical information in the present request that does not pertain to the police-involved shooting in accordance with that ruling. *See* ORD 673. However, we will address your argument for the remaining information, which pertains to the investigation of the police-involved shooting.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You assert the submitted information pertains to a closed investigation that did not result in conviction or deferred adjudication. Based on your representations, we agree section 552.108(a)(2) is generally applicable to the submitted information.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types

of information considered to be basic information). Therefore, with the exception of the basic front page offense information, you may withhold the submitted information under section 552.108(a)(2) of the Government Code.

In summary, the department may continue to rely upon Open Records Letter Nos. 2006-10582, 2007-15167, and 2009-12619 and withhold or release the policies and procedures on the use of taser weapons in accordance with those rulings. The department may continue to rely on Open Records Letter No. 2009-15938 and withhold or release any identical information in the present request that does not pertain to the police-involved shooting in accordance with that ruling. Apart from basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/rl

Ref: ID# 380790

Enc. Submitted documents

c: Requestor
(w/o enclosures)