



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2010

Ms. Evelyn W. Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-08389

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# 382041.

The Houston Police Department (the "department") received a request for several categories of information pertaining to use of force and tasers. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We understand you to assert that release of portions of the submitted information may implicate the proprietary interests an interested third party, Taser International, Inc. ("Taser"). Accordingly, you indicate that the department has notified Taser of the request and of the company's opportunity to submit arguments to this office as to why its information should be excepted from public disclosure. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Taser has not submitted comments to this office explaining why any portion of the submitted

information relating to the company should not be released to the requestor. Because we have not received comments from the interested third party, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interests of Taser. Accordingly, none of the information pertaining to Taser may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret).

You inform us some of the requested information regarding the policies and procedures on the use of taser weapons and use of force was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2006-03239 (2006), 2006-10582 (2006) and 2007-15167 (2007). In each of these rulings, we concluded the department may withhold some or all of the information 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 these rulings as previous determinations and withhold or release the information at issue in accordance with Open Records Letter Nos. 2006-03239, 2006-10582, and 2007-15167. *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). We will address your argument for the submitted information that was not the subject of the previous rulings.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Pruitt*, 551 S.W.2d 706). Section 552.108(b)(1) 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." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code 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). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You assert the general orders, circulars, and training materials submitted as Exhibits A through L are excepted from disclosure under section 552.108(b)(1). The department asserts that release of this information would provide an advantage to criminal suspects during confrontations with police officers. The department also argues that release of this information could increase the chance of injury to police officers during confrontations with criminal suspects. You have also provided an affidavit from a department executive assistant chief who further explains how disclosure of Exhibits A through L would endanger the lives of police officers and other persons, as well as provide aid and support to criminal elements in carrying out their criminal activity, avoiding detection, and hindering law enforcement investigative efforts. Based on these arguments and our review, we agree portions of Exhibits A through L, which we have marked, are protected by section 552.108(b)(1) and may be withheld on that basis. However, we find you have failed to establish how public access to the remaining information in Exhibits A through L would interfere with law enforcement or endanger police officers. Accordingly, the department may not withhold the remaining information in Exhibits A through L under section 552.108(b)(1) of the Government Code.

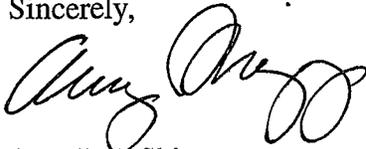
We note portions of the remaining submitted information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the department may continue to rely on Open Records Letter Nos. 2006-03239, 2006-10582, and 2007-15167 for the information that was at issue in the prior requests. For the information that is not subject to the prior rulings, the department may withhold the information we have marked in Exhibits A through L under section 552.108(b)(1) of the Government Code. The department must release the remaining information, but any information that is protected by copyright may only be released in accordance with copyright law.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/sdk

Ref: ID# 382041

Enc. Submitted documents

c: Requestor
(w/o enclosures)