



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2010

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2010-14987

Dear Mr. Batoon:

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#395450.

The El Paso Police Department (the "department") received a request for the complete standard operating procedures manual for the department. The department received a second request for eleven categories of information pertaining to the department's policies and statistics regarding the use of tasers, including portions of the previously requested procedures manual. You state you will release some of the requested information to the first requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information, some of which consists of a representative sample.¹

You inform us the use of force policy in the procedures manual was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-00394 (2006). You state the information you have highlighted in the use of force

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.

policy is "substantially" the same as the information ruled on in the previous ruling. We note that several of the entries in the submitted use of force policy state they have been amended since the issuance of Open Records Letter No. 2006-00394. Therefore, because the information in the use of force policy is not precisely the same information as the information ruled on in Open Records Letter No. 2006-00394, the department may not rely on the previous ruling as a previous determination. *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). However, we will consider your arguments against disclosure of this information under section 552.108 of the Government Code.

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 Department 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).

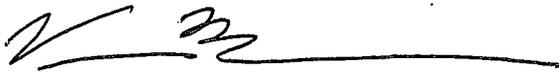
You assert the information you have highlighted in the procedures manual and the department's taser training guidelines is excepted under section 552.108(b)(1). You argue that release of this information would interfere with law enforcement, as well as provide aid and support to criminal elements in carrying out their criminal activity, avoiding detection, and hindering law enforcement investigative efforts. Based on these arguments and our review, we agree the information you have marked in the department's procedures manual and the taser training guidelines is protected by section 552.108(b)(1) and may be withheld

on that basis. Although we also understand you to generally argue section 552.108(b)(1) for the submitted statistics and uniform crime reporting reports, you have failed to provide arguments explaining how release of this information would interfere with law enforcement or crime prevention. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Accordingly, the department may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#095450

Enc. Submitted documents

c: Requestors
(w/o enclosures)