



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2010

Ms. Laura Garza Jimenez
Nueces County Attorney
Nueces County Courthouse
901 Leopard Street, Room 207
Corpus Christi, Texas 78401-3680

OR2010-15793

Dear Ms. Jimenez:

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# 397189.

The Nueces County Sheriff's Department (the "sheriff") received a request for eleven categories of information pertaining to use of force and tasers. You state you do not have any responsive documents for category numbers 7, 8, and 11.¹ You also state you will release some information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. You assert that release of portions of the submitted information may implicate the proprietary interests of an interested third party, Taser International, Inc. ("Taser"). Accordingly, you state the sheriff 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.

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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, no portion of the submitted information may be withheld based on the proprietary interests of Taser. *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).

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 Record 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.*, ORDs 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 claim the submitted taser instructor guide, taser certification course, and the portion of the use of force section of the general manual pertaining to tasers are excepted from disclosure under section 552.108(b)(1). You assert that release of this information would provide an advantage to criminal suspects during confrontations with police officers and could increase the chance of injury to police officers during these confrontations. You have also provided an affidavit from an assistant chief deputy who further explains that disclosure of submitted information 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 the submitted information, 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 would interfere with law enforcement or endanger police officers. Accordingly, the sheriff may not withhold the remaining information under section 552.108(b)(1) of the Government Code.

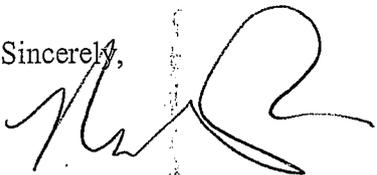
We note, and you acknowledge, portions of the remaining submitted information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body 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 sheriff may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The sheriff 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 397189

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Ms. Holly Gibeaut
Taser International, Inc.
17800 North 85th Street
Scottsdale, Arizona 85255-6311
(w/o enclosures)