



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2014

Ms. Sara R. Thornton
Counsel for the City of Sweetwater
Lloyd Gosselink
816 Congress Avenue, Suite 1900
Austin, Texas 78701

OR2014-20589

Dear Ms. Thornton:

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# 542824.

The Sweetwater Police Department (the "department"), which you represent, received a request for all use of force reports since January 1, 2010. 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

Initially, you state the department received the request for information on August 25, 2014. You explain you sent the requestor a cost estimate on September 9, 2014. *See* Gov't Code § 552.2615. You assert the request for information was withdrawn by operation of law for failure to timely respond to the cost estimate. We note, however, you have provided our office with an e-mail communication wherein the requestor responded to the cost estimate within ten business days and modified his request in compliance with section 552.2615. *See id.* § 552.2615(a). Thus, we conclude the request for information was not withdrawn by

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

operation of law. *See id.* § 552.2615(b). Accordingly, we address your arguments against disclosure.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 322, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable 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 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the submitted use of force reports reveal specific methods and procedures for using both lethal and non-lethal force used by the department when taking suspects into custody. You assert release of the submitted use of force reports would “give the opportunity for private citizens to review and anticipate weaknesses in a specific law enforcement situation, and to evaluate the officer’s procedures, restrictions and limitations in using a particular level of force.” You further state the submitted use of force reports contain information regarding when an officer may or may not use deadly force in enforcing laws and the various types of force officers may use. Based on your representations and our review, we find the release of the portions of the submitted information we have marked would interfere with law enforcement. Therefore, the department may withhold the portions of the submitted information we have marked under section 552.108(b)(1) of the Government Code. However, you have failed to demonstrate the remaining information would interfere with law enforcement. Thus, none of the remaining information may be withheld under section 552.108(b)(1) of the Government Code.

Section 552.108(b)(2) excepts from disclosure “[a]n 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 . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). Section 552.108(b)(2) protects internal law enforcement and prosecution records that relate to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body

claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the department “reasonably believes that some of the [remaining information] will not have resulted in either conviction or deferred adjudication.” However, you have submitted multiple use of force reports and you have not identified which reports relate to investigations that did not result in conviction or deferred adjudication. Thus, you have not demonstrated the applicability of section 552.108(b)(2) to any portion of the remaining information. Accordingly, the department may not withhold the remaining information under section 552.108(b)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the medical information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the medical information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The department must withhold the medical information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Olds", with a long horizontal flourish extending to the right.

Daniel Olds
Assistant Attorney General
Open Records Division

DO/ac

Ref: ID# 542824

Enc. Submitted documents

c: Requestor
(w/o enclosures)