



September 26, 2001

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

OR2001-4322

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152729.

The Nueces County Attorney's Office (the "county attorney") received a request for copies of complaints and particular rules relating to the use of force in a Nueces County jail. You state that you have responded to the requestor's other requests for information that were noted in his June 29, 2001 letter to your office. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). You state that although the county does not utilize "nightsticks," it does utilize a similar type of weapon, procedures for the use of which are contained in the submitted Exhibit 2. It thus appears that the county attorney has determined that Exhibit 2 is responsive to the request at issue.¹ You claim that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may make comments stating why information should or should not be released).

Section 552.108(b)(1) of the Government Code provides:

(b) An 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 is excepted from the requirements of Section 552.021 if:

¹ We note that a governmental body has a good faith duty to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990).

(1) release of the internal record or notation would interfere with law enforcement or prosecution.

Gov't Code § 552.108(b)(1). This office has determined that procedural information related to law enforcement may, under some circumstances, be withheld from disclosure under section 552.108 or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 341 (1982) (Department of Public Safety drivers' licenses forgery detection procedures), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). However, when section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. *See* Open Records Decision No. 434 at 3(1986). You state that the submitted information contains detailed procedures on the amount and degree of force which may be employed in a given situation subject to the surrounding circumstances. You also state that access to this detailed information could assist an incarcerated inmate or an arrestee in devising methods by which to escalate the use of force continuum. Based on your arguments and our review of the submitted information, we conclude that release of some of the information would interfere with law enforcement and crime prevention. Therefore, you may withhold pages 10-3 through 10-9, which we have marked, from disclosure pursuant to section 552.108(b)(1) of the Government Code. However, you must release all other submitted information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

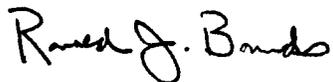
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 152729

Enc. Marked documents

cc: Mr. Michael C. F. White
2554 Lincoln Boulevard, #209
Marina Del Rey, California 90291
(w/o enclosures)