



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2007

Ms. Teresa Special
Assistant City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2007-10488

Dear Ms. Special:

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# 288922.

The San Angelo Police Department (the "department") received two requests for specified information pertaining to the department's use of tasers.¹ You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹The department sought and received a clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

²The department asserts that some of the submitted information is excepted under section 552.101 of the Government Code; however, the department has not submitted arguments explaining how this exception applies to the submitted information. *See* Gov't Code § 552.301(e)(1) (governmental body must explain applicability of raised exceptions). Therefore, we assume the department has withdrawn its claims under section 552.101. *See id.* §§ 552.301, 552.302.

Initially, we note that some of the submitted information, including Exhibit C, which pertains to the first request for information, was created after the department received this request. The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Thus, the city is not required to release this information, which we have marked, pursuant to the Act.

You assert that the remaining information in Exhibit D is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov’t Code §§ 552.108(a)(1), 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit D relates to pending criminal investigations by the department and the Texas Rangers. Based on this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), writ refused n.r.e., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the remaining information in Exhibit D pursuant to section 552.108(a)(1) of the Government Code.³

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).

³As our ruling is dispositive, we do not address your other argument for exception of this information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 288922

Enc. Submitted documents

c: Ms. Maribel Salazar
34 West Harris Avenue
San Angelo, Texas 76903
(w/o enclosures)

Ref: ID# 288922

Mr. Carlos Rodriquez
Webb, Stokes & Sparks, L.L.P.
P.O. Box 1271
San Angelo, Texas 76902
(w/o enclosures)