



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2007

Ms. Julia M. Vasquez
First Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2007-11235

Dear Ms. Vasquez:

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# 287829.

The Wichita Falls Police Department (the "department") received a request for all information pertaining to a specified incident, as well as information pertaining to the department's use of taser guns. You state that you have released responsive information pertaining to the taser's manufacturer, voltage and maintenance. You state that the department does not maintain information responsive to the request for the "agency of [the] state that authorized use by local police department of taser gun [sic]." You claim that the department need not comply with the request pursuant to section 552.028 of the Government Code. In the alternative, you claim that the information pertaining to the incident in question and use of force policy is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.028 of the Government Code provides in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You state, and the submitted documents indicate, that the requestor is the mother of the individual charged with the crime that serves as the basis for the requested information, and that this individual is currently incarcerated. The fact that a requestor is related to an imprisoned individual does not in itself establish that the requestor is acting as the agent of the imprisoned individual. Since you have not provided any additional information establishing that the requestor is in fact acting as an agent of an imprisoned individual, we cannot conclude that section 552.028 is applicable in this instance.

You argue that the submitted case report, # 07-052403, is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that case report # 07-052403 relates to an investigation that is closed, but that "is awaiting disposition with the Wichita County Criminal District Attorney. Thus, it appears by this statement that prosecution of this case is still ongoing. Accordingly, you have not shown that case report # 07-052403 pertains to a case that concluded in a final result. Therefore, you may not withhold the police report under section 552.108(a)(2).

Next, you argue that the use of force policy in Exhibit D is excepted from disclosure under section 552.108(b)(1). Section 552.108(b)(1) 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: (1) release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1). This section 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." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use

of electronic eavesdropping equipment). To claim this aspect of section 552.108 protection, however, 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). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

In response to the request for the use of force policy, you submitted General Orders 100.038 and 200.010. Much of General Orders 100.038 and 200.010 relate to a description of firearm authorization, handling, and usage. Upon review of the request, it does not appear that the requestor has actually requested this specific information, and we find that these portions of General Orders 100.038 and 200.010 are not responsive to this request. Accordingly, the department need not release the information pertaining to firearms in General Orders 100.038 and 200.010 in response to this request and this ruling will not address this non-responsive information.

As to the responsive information, you claim that the information in Exhibit D, General Orders 100.038 and 200.010, “consist[s] of detailed guidelines regarding the use of weapons, use of force and use of force continuum.” You state that release of this material would “provide an advantage to criminal suspects during confrontations with police officers.” The department also argues that release of this information could increase the chance of injury to police officers during confrontations with criminal suspects. However, upon review of the submitted documents, you have failed to establish that the responsive information is anything more than routine administrative information the release of which would not interfere with law enforcement. Accordingly, the department may not withhold the responsive information in Exhibit D under section 552.108(b)(1) of the Government Code. As you raise no other exceptions against disclosure, Exhibit B and the responsive information in Exhibit D must be released in its entirety.

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, 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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 287829

Enc. Submitted documents

c: Ms. Sylvia Gregory
2031 Maurine Street
Wichita Falls, Texas 76306
(w/o enclosures)