



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2011

Mr. Bryan McWilliams
Public Safety Legal Advisor
Assistant City Attorney
City of Amarillo
200 S.E. Third Avenue
Amarillo, Texas 79101-1514

OR2011-5768

Dear Mr. McWilliams:

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# 415730 (APD Ref. # 11-181).

The Amarillo Police Department (the "department") received a request for the department's use of force policy, specifically including use of "batons, tasers, firearms, etc." You state some information has been released to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note you have redacted non-responsive information from the submitted information. This decision does not address the public availability of the non-responsive information, and that information need not be released.

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 also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte*

Pruitt, 551 S.W.2d 706, 710 (Tex. 1977)). 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.” *City of Fort 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 section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 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 state the submitted use of force policy contains information regarding weapons and ammunitions policies not known to the general public. You further state the release of this information could permit individuals to “avoid police detection, escape capture, and jeopardize ongoing investigations and/or place officers and citizens in danger” by, for example, allowing individuals to “detect undercover officers and hinder surveillance operations.” Based on your arguments and our review of the information at issue, we find release of most of the information you have marked would interfere with law enforcement. However, we find the department has not established the release of the remaining information, which we have marked, would interfere with law enforcement; therefore, the department may not withhold the information we have marked under section 552.108(b)(1). As you raise no other argument against disclosure, the department must release the information we have marked. The department may withhold the remaining information you have marked under section 552.108(b)(1) of the Government Code.

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,

A handwritten signature in black ink that reads "Misty Haberer Barham". The signature is written in a cursive style with a large, prominent initial "M".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID # 415730

Enc. Submitted documents

c: Requestor
(w/o enclosures)