



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2013

Mr. William P. Chesser
Counsel for the City of Breckenridge
Messer, Rockefeller & Fort
4400 Buffalo Gap Road, Suite 2800
Abilene, Texas 79606

OR2013-03456

Dear Ms. Rockefeller:

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# 479961.

The City of Breckenridge (the "city"), which you represent, received two requests from the same requestor for the city's police department (the "department") policies and procedures regarding the use of non-lethal force devices and products, the requirements for reporting the use of such devices by the department, and all incident reports regarding the use of non-lethal defense products or weapons discharged by the department during a specified time period.¹ 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 information.

Initially, we note the use of force form submitted in Exhibit E in response to the first request was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-03254 (2013). In Open Records Letter No. 2013-03254, we determined the city may withhold the information at issue, including the use of force form, under section 552.108(a)(2) of the Government Code on behalf of the Office of the Attorney General. You inform us in your brief to this office dated February 20, 2013, you have

¹We will refer to the request dated December 3, 2012, as the "first request" and the request dated February 7, 2013, as the "second request."

released the use of force form to the requestor. Thus, we note circumstances have changed with respect to the use of force form at issue. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the city may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential under law. Because section 552.108 does not prohibit the release of information or make information confidential, the city may not now withhold the previously released use of force form under this exception. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). However, we will address your submitted arguments against disclosure of the information that has 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 City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (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 remaining information at issue contains guidelines and procedures regarding the department's use of force, including electronic devices and chemical spray. You state that release of the information at issue “would inform perpetrators of the type of conduct an officer must tolerate prior to using force, chemical spray or an electronic device,” and as a result would “permit private citizens to anticipate weaknesses in the [d]epartment,” and “jeopardize the safety of the [d]epartment's officers.” Based on your representations, we have marked information the city may withhold under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated that release of any of the

remaining information would interfere with law enforcement or crime prevention. Therefore, the city may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code. As no further exceptions to disclosure have been raised, 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.

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, appearing to read 'Kathryn R. Mattingly', written in a cursive style.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 479961

Enc. Submitted documents

c: Requestor
(w/o enclosures)