



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2013

Sergeant Rocky Bright
Custodian of Records
Ector County Sheriff's Office
P.O. Box 2066
Odessa, Texas 79760

OR2013-12772

Dear Sgt. Bright:

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# 494023.

The Ector County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified arrest and policies regarding the use of tasers. You state you have released some of the requested information. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-18115 (2011). In that ruling, we determined in relevant part that the sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code and must release the remaining information. We have no indication the law, facts, or circumstances on which this prior ruling was based have changed. Accordingly, to the extent the information responsive to the current request is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office may continue to rely on Open Records Letter No. 2011-18115 as a previous determination and withhold or release the identical information in accordance with this ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent

the submitted information is not subject to this ruling, we will consider the submitted arguments against disclosure.

Section 552.108 of the Government Code provides in pertinent part:

(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 [required public disclosure] if:

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

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(b)(1), (3). Subsection 552.108(b)(1) of the Government Code 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.). 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 (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). 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).

You state the information at issue consists of the use of force policy of the sheriff's office. You assert release of the information at issue could impair an officer's ability to arrest a

suspect or protect public peace which would permit citizens to anticipate weaknesses in the sheriff's office and jeopardize officer safety. Based on your representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, the sheriff's office may withhold the information we marked under subsection 552.108(b)(1) of the Government Code. However, we find you have not demonstrated release of any of the remaining information at issue would interfere with law enforcement or crime prevention. We, therefore, conclude the sheriff's office may not withhold any of the remaining information under subsection 552.108(b)(1) of the Government Code.

You also contend the information at issue is subject to subsection 552.108(b)(3). However, we find you have failed to demonstrate how the remaining information at issue was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Thus, we find you have not established how the remaining information at issue is subject to subsection 552.108(b)(3), and the sheriff's office may not withhold this information on that basis.

In summary, to the extent the information responsive to the current request is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office may continue to rely on Open Records Letter No. 2011-18115 as a previous determination and withhold or release the information in accordance with that ruling. The sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code. The sheriff's office must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 494023

Enc. Submitted documents

cc: Requestor
(w/o enclosures)