



February 26, 2015

Chief Mark L. Davis
Chief of Police
Silsbee Police Department
1104 North 5th Street
Silsbee, Texas 77656

OR2015-03815

Dear Chief Davis:

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# 555994.

The Silsbee Police Department (the "department") received a request for the following information during specified time periods: (1) use of force complaints filed by citizens; (2) documents pertaining to the use of tasers; (3) video and/or audio recordings made during the use of a taser or a similar device; (4) and complaints of any kind made against two named officers. You state the department will release some of the requested video and audio recordings. You state the department has no information responsive to the request for complaints against one of the named officers.¹ You claim the submitted information is excepted from disclosure under sections 552.102 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim the information submitted as Exhibits B and E is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

“information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the information you seek to withhold is not excepted under section 552.102(a). Thus, the department may not withhold Exhibits B and E under section 552.102(a).

Next, you seek to withhold the video recordings submitted as Exhibit D 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.” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to pending criminal prosecutions. Based on this representation, we conclude that 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. Civ. App.—Houston [14th Dist.] 1975) (court February 26, 2015 delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold Exhibit D under section 552.108(a)(1).

Next, you seek to withhold Exhibit C, which includes use of force reports and taser use reports, under section 552.108(b)(1) of the Government Code.² 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 . . . 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 322, 327 (Tex. App.—Austin 2002, no pet.) (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.

²Although you also raise section 552.108(b)(2) of the Government Code for the information at issue, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the information at issue. *See* Gov’t Code §§ 552.301, .302.

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 Exhibit C contains specific information on the use of a taser or physical force used by officers in gaining compliance of suspects. You assert release of the information at issue would “allow certain persons with criminal intent to gain information on how to thwart or interrupt lawfully administered use of force or weapons” and this would place “officers and the public at substantial risk of harm or injury.” Based on your representations and our review, we find the release of the information we have marked would interfere with law enforcement. Therefore, the department may withhold the information we have marked in Exhibit C under section 552.108(b)(1) of the Government Code. However, you have failed to demonstrate the release of the remaining information would interfere with law enforcement. Thus, none of the remaining information in Exhibit C may be withheld under section 552.108(b)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.³ *See* Gov’t Code § 552.130. Accordingly, the department must withhold the information we have marked in Exhibit C under section 552.130 of the Government Code.

In summary, the department may withhold Exhibit D under section 552.108(a)(1) of the Government Code. The department may withhold the information we have marked in Exhibit C under section 552.108(b)(1) of the Government Code. The department must withhold the information we have marked in Exhibit C under section 552.130 of the Government Code. The department must release the remaining submitted 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

³The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Tamara H. Holland". The signature is written in a cursive style with a large initial "T".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 555994

Enc. Submitted documents

c: Requestor
(w/o enclosures)