



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 29, 2015

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
Criminal Law and Police Section
1400 South Lamar Street
Dallas, Texas 75215

OR2015-20399

Dear Ms. Armstrong:

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# 581530 (Dallas ORR# 2015-11672).

The Dallas Police Department (the "department") received a request for information pertaining to the death of a named individual, the taser certification of four named individuals, and the department's policies and operating procedures for taser use and excessive force. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-12854 (2015). In Open Records Letter No. 2015-12854, we determined the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based

¹Although you raise section 552.101 of the Government Code in conjunction with common-law privacy, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim section 552.101 in conjunction with common-law privacy applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

have changed. Accordingly, to the extent the requested information is identical to the information previously submitted and ruled on by this office, we conclude the department may continue to rely on Open Records Letter No. 2015-12854 as a previous determination and withhold the information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the department's arguments against release of the submitted information, which is not subject to Open Records Letter No. 2015-12854.

Next, we note you have submitted a representative sample of information responsive to only some portions of the request. You have not submitted any information responsive to the portion of the request seeking the department's policies and procedures for taser use and excessive force. Although you state the department has submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised this open records letter applies to only the types of information you have submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the type of information you submitted to this office. *See* Gov't Code § 552.302. Therefore, to the extent any policies and operating procedures for taser use and excessive force existed and were maintained by the department on the date it received the request, we assume the department has released them to the requestor. If the department has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The department states the submitted information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of the submitted 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, the department may continue to rely on Open Records Letter No. 2015-12854 as a previous determination and withhold the identical information in accordance with that ruling. The department may withhold the remaining information under section 552.108(a)(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.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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 581530

Enc. Submitted documents

c: Requestor
(w/o enclosures)