



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2015

Mr. Steve Smeltzer
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Texas Department of Criminal Justice
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Huntsville, Texas 77342-4004

Ms. Patricia Fleming
Assistant General Counsel
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OR2015-26074

Dear Mr. Smeltzer and Ms. Fleming:

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# 590893.

The Texas Department of Criminal Justice (the "department") received a request for (1) information regarding a specified incident involving the requestor's client; (2) communications with a specified entity regarding the specified incident; and (3) the department's policies and practices regarding the indoor use of tear gas. You state the department has released or will release some responsive information. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.134 of

the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). 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 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). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques, but was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 (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); *but see* 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 argue the release of the information you have indicated would enable offenders to “tailor their actions to thwart or compromise [the department’s] tactical responses.” Based on your arguments and our review, we agree release of the information we have marked would interfere with law enforcement. Accordingly, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated release of any of the remaining information would interfere with law enforcement or crime prevention. Consequently, the department may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.134 of the Government Code relates to information about inmates of the department. This exception provides, in relevant part:

- (a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides, in part:

Notwithstanding Section . . . 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). Thus, section 552.134 is explicitly made subject to section 552.029. You state the information you have indicated pertains to an inmate confined in a facility operated by the department. Upon review, we agree the information you have indicated is subject to section 552.134 of the Government Code. However, as you acknowledge, the information at issue relates to an incident involving the use of force. Thus, the department must release basic information about the incident pursuant to section 552.029. The basic information that must be released includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Accordingly, except for basic information under section 552.029(8) of the Government Code, which you state will be released, the department must withhold the information you have indicated under section 552.134 of the Government Code.

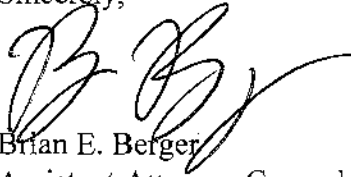
In summary, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. Except for basic information, which you state will be released, the department must withhold the information you have indicated under section 552.134 of the Government Code. The 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.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,

A handwritten signature in black ink, appearing to read "B. Berger", with a long horizontal flourish extending to the right.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 590893

Enc. Submitted documents

c: Requestor
(w/o enclosures)