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FOR FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1250
Washington, D.C. 20005
(202) 795-9300
www.rcfp.org

Bruce D. Brown
Executive Director
bbrown@rcfp.org (202) 795-9301

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By U.S. Mail

January 29, 2015

Dear Attorney General Ken Paxton,

This letter is submitted on behalf of the Reporters Committee for Freedom of the Press (“Reporters Committee”), a nonprofit association of news reporters and editors. Since 1970, the Reporters Committee has worked to safeguard the right to a free and unfettered press guaranteed by the First Amendment, and to ensure the public’s right to be informed, through the news media, of the actions of government.

We write to express our concern regarding the position of the City of Victoria (“the City”) that the Victoria Police Department’s use of force policy is exempt from disclosure under the Texas Public Information Act, 5 Tex. Gov’t Code Ann. § 552.001, *et seq.* (“TPIA”). It is our understanding that on January 4, 2015, the City received a request under the TPIA for “. . . a copy of all ‘Use of Force’ for Lethal and Nonlethal forms.” By letter dated January 5, 2015, the City requested a decision from your office as to whether such records are exempt from disclosure under the TPIA. A true and correct copy of that letter is attached hereto as Exhibit A for your reference.

The City’s reasoning is not only insufficient to warrant withholding the requested records, but also relies on the incorrect assertion that their release would impede law enforcement activity. The citizens of Texas have a paramount interest in information concerning the use of force, including deadly force, by law enforcement officers. For the reasons set forth herein, we strongly urge you to require the complete disclosure of the requested records.

The TPIA was enacted to ensure the public access to “complete information about the affairs of government and the official acts of public officials and employees.” 5 Tex. Gov’t Code Ann. § 552.001(a). As the Texas Supreme Court has stated, the TPIA supports a liberal construction of its provisions in favor of disclosure and narrow interpretation of its exceptions to disclosure. *Simmons v. Kuzmich*, 166 S.W.3d 342, 346 (Tex. 2005); *see also* 5 Tex. Gov’t Code Ann. § 552.001(b). A governmental body asserting any of its exceptions has the burden of establishing that the records at issue fall within that exception. *See Simmons*, 166 S.W.3d 348. These principles must guide the decision as to whether the City may withhold the records at issue here from the public.

The City argues that its use of force policy may be exempt from the TPIA under Section 552.108(b), which exempts

[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: (1) release of the internal record or notation would *interfere with law enforcement or prosecution . . .*”

(emphasis added).

Yet the City has offered nothing more than one conclusory, speculative, and wholly unconvincing sentence to support its claim that release of its use of force policies would purportedly interfere with law enforcement activity. It contends that public disclosure of its use of force policies could “impair an officer’s ability to arrest a suspect by placing individuals at an advantage . . .”¹ It is not at all clear how, and under what circumstances, this could possibly be the case. The notion that public disclosure of, for example, the “factors used to determine the reasonableness of force” or procedures for “reporting the use of force”² would place individuals at an “advantage” is belied by common sense. At most, knowledge of such policies might prevent individuals from requiring that law enforcement officers resort to the use of force during an arrest, which benefits both civilians and law enforcement. In any case, the City’s opaque statement offers no explanation that would suffice to meet its burden to justify the withholding of records. *See Thomas v. Cornyn*, 71 S.W.3d 473, 490 (Tex. App. 2002) (stating that an agency must “*produce evidence* that an exception to disclosure applies.”) (emphasis added)).

Records such as police rules of procedure and training and instruction manuals may not be withheld if the agency fails to explain “why the investigative procedures and techniques are any different from those that are commonly known . . .” Tex. Att’y Gen. ORD-252, 3 (1980).³ Numerous use of force policies of law enforcement agencies throughout Texas are publicly available,⁴ and the City has made no showing that its policy contains unique and special procedures. Nor can the City make such a showing. The requested records are procedures of *general* applicability; they do not relate to any *particular* law enforcement action. Therefore, they must be released pursuant to the TPIA.

Moreover, the benefits of public disclosure of such policies are substantial. The use of force, especially deadly force, by law enforcement is a serious act that should be subject to public scrutiny and oversight. Disclosure of use of force policies will help

¹ Letter from Linda Champion, Assistant City Attorney, to Texas Attorney General’s Office (Jan. 5, 2015), attached as Exhibit A.

² *Policy 200: Use of Force*, CORPUS CHRISTI POLICE DEPARTMENT, <http://photographyisnotacrime.com/wp-content/uploads/2015/01/Corpus-Christi-TX-PD-Use-of-Force-Policy.pdf> (last accessed Jan. 28, 2015)

³ <https://www.texasattorneygeneral.gov/opinions/openrecords/46white/ord/1980/pdf/ord19800252.pdf>

⁴ *See, e.g.*, Corpus Christi Police Department, *Policy 200: Use of Force; Use of Force*, UNIVERSITY OF TEXAS AT AUSTIN POLICE DEPARTMENT, <http://www.utexas.edu/police/manual/a12.html>.

citizens better understand how law enforcement determines whether force is necessary and to what extent, which will help foster greater understanding among the general public. This is particularly important given that such policies have recently been the subject of heightened public interest in Texas.⁵ The citizens of Victoria need access to these policies in order to determine if the policies are sound or require revision. This is because, as the TPIA notes,

“[t]he people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

5 Tex. Gov’t Code. Ann. § 552.001(a).

The Reporters Committee urges you to require the Victoria Police Department to disclose the requested records in their entirety. Doing so will not interfere with law enforcement proceedings in any way, and will ensure that the Texas government and all of its components remain accountable to its citizens.

Sincerely,

Adam A. Marshall

Hannah Bloch-Wehba

cc:

Linda Champion, City of Victoria Legal Department (via fax)

Mike, publicrecordsmo@publicrecordsmo.com (via email)

⁵ See, e.g., Ashley Slayton, *Longview police release video of officer-involved shooting*, KLTV-7 (Jan. 28, 2015), <http://www.kltv.com/story/27964641/longview-police-detail-events-leading-up-to-officer-involved-shooting>; Abby Phillip, *Fired Texas cop did ‘nothing unreasonable’ by using a stun gun on a 76-year-old, lawyer says*, THE WASHINGTON POST (Jan. 12, 2015), <http://www.washingtonpost.com/news/morning-mix/wp/2015/01/12/fired-texas-cop-did-nothing-unreasonable-by-using-a-stun-gun-on-a-76-year-old-lawyer-says/>.

EXHIBIT A