



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 7, 2004

Ms. Patricia E. Carls  
City Attorney  
City of Georgetown  
106 E Sixth Street, Suite 550  
Austin, Texas 78701

OR2004-8524

Dear Ms. Carls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209784.

The City of Georgetown (the "city"), which you represent, received a request for copies of the written statutes, policies and procedures for "attacking and setting up perimeters of fire for Georgetown police officers acting outside the city limits[.]" You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your claim that the city is not required under section 552.027 of the Government Code to provide some of the requested information to the requestor. Section 552.027 provides:

- (a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.
- (b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

- (c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. In this instance, the requestor is asking for copies of written statutes, policies and procedures. You state that written statutes responsive to this request, potentially within the Code of Criminal Procedure and the Local Government Code, are available to the public online. Therefore, because this information is contained in resource materials that are commercially available, we conclude that, pursuant to section 552.027, you do not have to provide information responsive to the request for written statutes.

The city claims that the submitted information is excepted from disclosure under section 552.101 in conjunction with section 418.176 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. Section 418.176 provides:

- (a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

- (2) relates to a tactical plan of the provider[.]

Gov't Code § 418.176. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The city states it maintains the submitted information for the purpose of responding to an act of terrorism or related criminal activity. Furthermore, the city explains that the procedures relate to an emergency response provider's staffing requirements and tactical plan in that they set out the roles, responsibilities, and authority of the police personnel who will respond to an act of terrorism. After reviewing the information, we agree that it is maintained for the purpose of responding to an act of terrorism. In addition, we conclude that some of the information relates to an emergency response provider's staffing requirements and tactical plan. We have marked such information that the city must withhold as confidential under section 418.176.

We next examine your section 552.108 claim for the remaining information. Section 552.108(b)(1) excepts from disclosure an internal record of a law enforcement agency 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." Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that predecessor to section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution). Upon review of your arguments and the remaining information, we find that the city has not shown how release of the remaining information would interfere with law enforcement or crime prevention. *See* Gov't Code § 552.108(b)(1); Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts, unless information does so on its face). We therefore determine that the remaining information is not excepted under section 552.108(b)(1), and the city must release it.

In summary, the city must withhold the marked information under section 418.176. The city must release the rest.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

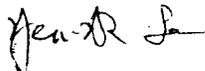
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/MAB/kr1

Ref: ID# 209784

Enc. Submitted documents

c: Mr. Keith Peshack  
800 Oak Crest Lane  
Georgetown, Texas 78628  
(w/o enclosures)