



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2007

Ms. Susan Denmon Gusky
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OR2007-04863

Dear Ms. Gusky:

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# 276007.

The Port of Houston Authority (the "authority"), which you represent, received a request for any and all contracts pertaining to port security management of the Port of Houston Authority since March 2, 2001; any and all internal or external communications related to any and all port security management contracts since March, 2001; and any and all port-issued cellular telephone numbers and who they are issued to, with a list of those employees, their positions and their salaries.¹ You state that you will release some responsive information to the requestor, but 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 note that the authority has submitted information that is not responsive to the present request. This information, which we have marked, is not responsive to this request and need not be released. Moreover, we do not address such information in this ruling.

¹We note that the requestor clarified his request by specifying that he is not seeking information that this office determined the authority did not have to disclose in Open Records Letter No. 2006-12482 (2006). See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes. You assert that Exhibits 1, 2 and 3 are confidential under sections 418.176, 418.177, and 418.181 of the Texas Homeland Security Act (the “HSA”). Section 418.176 provides in relevant part:

(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[.]

Section 418.177 provides:

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Gov’t Code §§ 418.176, .177, .181. The fact that information may relate to a governmental body’s security concerns does not make the information per se confidential under the HSA. See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions 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 HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A).

You inform us that Exhibit 1 “reflects staffing requirements developed by the [authority] specifically for the purpose of preventing, detecting and responding to acts of terrorism or related criminal activity,” and thus relates directly to the authority’s tactical plans. After reviewing your arguments and the information at issue, we find that the authority has adequately explained how some of the information in Exhibit 1 falls within the scope of section 418.176 of the Government Code. Therefore, the authority must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

The remaining information in Exhibit 1 consists of the total number of hours security personnel work per month, the hourly rate these personnel are paid, and the monthly cost of these contracts. This information does not reveal detailed security plan information, such as the number of security personnel employed, the hours specific security personnel work, where they are stationed, or their shift rotations. Therefore, we find that the authority has not demonstrated that the remaining information in Exhibit 1 relates to an emergency provider’s staffing requirements or tactical plan. *See id.* § 418.176. Accordingly, none of the remaining information in Exhibit 1 may be withheld under section 552.101 of the Government Code on the basis of section 418.176 of the Government Code.

You next assert that the authority-issued cellular telephone numbers belonging to the executive director, the chief of police, facilities security officers, and the port directors are confidential under section 418.176. You state that these individuals are part of the authority police department’s emergency response team, which responds to terrorist attacks or related criminal activity. You also contend that if these cellular telephone numbers are released to the public, there is nothing to prevent an overload of messages or calls sent to these numbers. You state that the cellular telephones cannot deal with such overloads and would quickly become useless. Based on your representations and our review, we conclude that the cellular telephone numbers you have marked in Exhibit 2 are confidential under section 418.176 of the Government Code and must be withheld under section 552.101 of the Government Code.

You seek to withhold Exhibit 3 under sections 418.176, 418.177, and 418.181 of the Government Code. We note that Exhibit 3 consists of a memorandum from the authority to a security contractor regarding a specified incident. However, you have not shown that any of the information in Exhibit 3 relates to an emergency response provider’s staffing requirements, tactical plan, or list or compilation of pager or telephone numbers. *See id.* § 418.176. Likewise, you have not established that any of the information in Exhibit 3, or any of the remaining information in Exhibit 1, relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. *See id.* § 418.177. Furthermore, you have not demonstrated that any of the remaining information identifies the technical details of particular vulnerabilities of critical

infrastructure to an act of terrorism. *See id.* § 418.181. Therefore, we conclude that the authority may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176, section 418.177, or section 418.181 of the Government Code.

We next address your claims under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from public 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.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information which, 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) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would interfere with law enforcement because disclosure would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *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 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

A governmental body that relies on section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). You assert that release of the remaining information in Exhibit 1 and Exhibit 3 would reveal information that could impair the authority’s ability to maintain a safe environment and prevent crimes. However, having considered your arguments, we conclude that you have not explained how or why release of any of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the authority may not withhold any of the remaining information under section 552.108(b)(1).

We note that some of the remaining information may be excepted from public disclosure under section 552.136 of the Government Code.² Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The authority must, therefore, withhold the information we have marked pursuant to section 552.136 of the Government Code.

In summary, the authority must withhold the information we have marked in Exhibit 1 and the information you have marked in Exhibit 2 under section 418.176 of the Government Code in conjunction with section 552.101 of the Government Code. The authority must withhold the information we have marked pursuant to section 552.136 of the Government Code. The remaining submitted information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

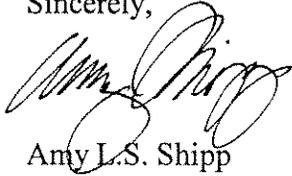
²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 at the Office of the Attorney General 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. 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 276007

Enc. Submitted documents

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