



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2008

Mr. Donald R. Stout
Colvin & Stout
P.O. Box 597
Ennis, Texas 75120

OR2008-15693

Dear Mr. Stout:

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# 327824.

The City of Midlothian (the "city"), which you represent, received a request for information pertaining to a reported task force "working/running/investigating from any office of the Midlothian Police Department." You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state, and provide documentation showing, you notified the Internal Revenue Services (the "IRS") of the request and of its right to submit arguments as to why the requested information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from the IRS. We have considered the submitted arguments and reviewed the submitted information.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(b) An 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 is excepted from the requirements of Section 552.021 if:

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

Id. § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular criminal investigation or prosecution. You have not informed this office that the submitted information relates to a particular criminal investigation or prosecution or how its release would interfere with a particular case. Thus, you have failed to demonstrate how release of the submitted information would interfere with the investigation or prosecution of a particular crime. Accordingly, you may not withhold any portion of the submitted information under section 552.108(a)(1).

Subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records; the release of which would interfere with on-going law enforcement and prosecution efforts in general. *See also 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 that, 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 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.,* ORDs 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).

You state a task force, "composed of undercover agents, is secretive by its very nature." You also state release of the requested information would allow the identification of undercover agents and describe the equipment to be used in covert operations. Further, you state release of the requested information would place the lives of undercover agents in jeopardy and would thwart law enforcement. Additionally, the IRS states, "the records and information sought, to the[] extent they exist and they confirm or deny the existence of the alleged task force, are records or information . . . which 'could reasonably be expected to risk circumvention of the law.'" Based on these representations and our review, we find the release of portions of the requested information would interfere with law enforcement. Therefore, we find the city may withhold the information we have marked under section 552.108(b)(1). However, you have failed to demonstrate release of the remaining information would interfere with law enforcement. Therefore, no portion of the remaining information may be withheld under section 552.108(b)(1).

You assert that the remaining information is excepted from disclosure under section 418.176 of the Texas Homeland Security Act (the "HSA"). Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses chapter 418 of the Government Code. Section 418.176 provides in 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 a law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). The fact that information may be related to a governmental body's emergency response preparedness or security concerns does not make such information per se confidential under the HSA. *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 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) (governmental body must explain how claimed exception to disclosure applies).

You seek to withhold the remaining information under section 418.176 of the Government Code. You generally assert the remaining information was collected and assembled or is maintained for the purpose of preventing, detecting, responding to, and investigating possible criminal activity. You have not, however, specifically explained how or why any of the remaining information is related to the staffing requirements, a tactical plan, or the pager or telephone numbers of an emergency response provider. *See id.* § 418.176(a)(1)-(3). Accordingly, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with section 418.176 of the Government Code.

In summary, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The remaining information must be released.¹

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

¹We note that the requestor has a right of access to his e-mail address. Gov't Code § 552.137(b) (owner of e-mail address may consent to release of e-mail address). In the event the city receives another request for this information from someone other than this requestor or his authorized representative, the city must ask this office for a decision whether the information is subject to public disclosure.

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).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/eeg

Ref: ID# 327824

Enc. Submitted documents

cc: Requestor
(w/o enclosures)