



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 14, 2010

Ms. Laura Garza Jimenez  
Nueces County Attorney  
Nueces County Courthouse  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2010-00769

Dear Ms. Jimenez:

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# 367199.

The Nueces County Sheriff's Department (the "department") received a request for nine categories of information pertaining to Operation Border Star or the Local Border Security Program, including any information related to funding, reporting requirements, arrests and interdictions, the use of specified equipment, and policies and procedures. You state that some responsive information will be released to the requestor, but assert that the department has no information responsive to categories 6, 8, and 9 of the request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.136 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 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

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

effectuate the laws of this State.” *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.*, ORD 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 that the submitted information in Exhibit 2 pertains to a security network and is used for sharing crime information and making operational decisions regarding border security. You assert that release of the information in Exhibits 1 and 3 will interfere with law enforcement by equipping criminals with guidance in how to tailor their behavior when encountering law enforcement. Further, you state that release of the information at issue will reveal law enforcement tactical strategies. You explain that release of the use and positioning of officers will compromise officer safety and affect the ability of the department to detect and deter criminal activity. Upon review of your arguments and the information at issue, we find the department may withhold Exhibit 2 and the information we have marked in Exhibit 1 under section 552.108(b)(1) of the Government Code.<sup>2</sup> However, we find the department has failed to meet its burden in explaining the applicability of section 552.108(b)(1) to any portion of the remaining information in Exhibits 1 or 3. *See id.* § 552.301(e)(1)(A) (governmental body has burden of proving that requested information must be withheld under stated exception). Accordingly, we conclude the department may not withhold any portion of the remaining information in Exhibits 1 and 3 under section 552.108(b)(1) of the Government Code.

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<sup>2</sup>As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

You seek to withhold the remaining information in Exhibits 1 and 3 under section 552.101 of the Government Code in conjunction with sections 418.176 and 418.177 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by other statutes, including sections 418.176 and 418.177 of the HSA. 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 the 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). Section 418.177 provides that information is confidential if it:

(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.

*Id.* § 418.177. 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 assert that the information at issue in Exhibit 1 “relates to a tactical plan of the provider [and to] an assessment . . . of the risk or vulnerability of persons or property . . . to an act of terrorism or related criminal activity.” You further claim that the release of the submitted information in Exhibit 3 would “compromise the effectiveness of law enforcement [by putting] criminals or terrorists on notice as to what kind of activity to avoid.” Upon review, however, we find that the remaining information in Exhibit 1 consists of general information regarding Operations Border Star and Stonegarden, while the information at issue in Exhibit 3 consists of statistical information regarding arrests. We find that the information at issue does not reveal specific staffing requirements or tactical methods related to the prevention, detection, response, or investigation of an act of terrorism or related criminal activity. Accordingly, the department may not withhold any of the remaining information in Exhibits 1 and 3 under section 552.101 in conjunction with section 418.176 of the Government Code.

Further, we find the department has failed to show that any of the remaining information relates to an assessment of the vulnerabilities of persons or property to an act of terrorism or related criminal activity. *See id.* § 418.177. We conclude, therefore, that the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

Finally, you assert that some of the remaining information is subject to section 552.136 of the Government Code.<sup>3</sup> Section 552.136(b) states that “[n]otwithstanding any other provision of [the Act], 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.” *Id.* § 552.136(b). Therefore, the department must withhold the yellow highlighted bank account and routing numbers in Exhibit 4 pursuant to section 552.136 of the Government Code. *See id.* § 552.136(a) (defining “access device”).

Finally, we note that some of the materials at issue appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright

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<sup>3</sup>We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including bank account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the department may withhold Exhibit 2 and the information we have marked in Exhibit 1 under section 552.108(b)(1) of the Government Code. The department must withhold the yellow highlighted bank account and routing numbers in Exhibit 4 pursuant to section 552.136 of the Government Code. The remaining information must be released to the requestor, but any copyrighted information may only be released in accordance with copyright law.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

CN/rl

Ref: ID# 367199

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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