



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-07696

Dear Ms. Cohen:

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# 380795 (ORA # 10-0537).

The Texas Department of Public Safety (the "department") received a request for any and all memos or proposals to increase security at the Texas State Capitol from January 21, 2010, to the present. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains letters that have been released to the public. This ruling does not address the public availability of those released letters, and we do not address the department's arguments for this information.

Next, we note the submitted information includes completed reports and investigations subject to 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Although you seek to withhold this information under section 552.111 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver), 665 at 2

Nos. 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 is not other law that makes information confidential for the purpose of section 552.022. Therefore, the department may not withhold the information subject to section 552.022(a)(1) under section 552.111 of the Government Code. However, section 552.101 is other law for purposes of section 552.022. Therefore, we will consider your arguments under this exception, as well as section 552.108, for the information subject to section 552.022(a)(1), along with the remaining submitted information. Additionally, we will also consider your claim under section 552.111 for the information that is not subject to section 552.022(a)(1).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the some of the submitted information relates to an ongoing criminal case pertaining to an incident that occurred at the Capitol on January 21, 2010. Based on your representation and our review, we agree that the release of the submitted information pertaining to this specified incident would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we conclude you may withhold the submitted information that pertains to the incident that occurred at the Capitol on January 21, 2010, under section 552.108(a)(1) of the Government Code.

Next, you assert the remaining information is excepted from disclosure under section 552.101 of the Government Code, which 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. You raise section 552.101 in conjunction with sections 418.176, 418.177, and 418.182 of the Texas Homeland Security Act (the “HSA”), 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 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. Section 418.182 provides in part:

- (a) [I]nformation, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182. 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 state the remaining submitted information consists of staffing requirements for the Capitol police force, tactical training plans for Capitol police officers, risk and vulnerability assessments for the Capitol complex, security system details, and tactical response plans in the event of an emergency. Upon review, we find you have demonstrated that some of the

information at issue relates to staffing requirements 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. You have further demonstrated that some of the remaining information was collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism and relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism. Finally, we find you have demonstrated that the remaining information relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Therefore, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with sections 418.176, 418.177, and 418.182 of the Government Code.¹

In summary, the department may withhold the submitted information that pertains to the incident that occurred at the Capitol on January 21, 2010, under section 552.108(a)(1) of the Government Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with sections 418.176, 418.177, and 418.182 of the Government Code.

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, 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,



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

ALS/rl

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 380795

Enc. Submitted documents

cc: Requestor
(w/o enclosures)