



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2010

Ms. Martha T. Williams
Olson & Olson, L.L.P.
For City of Jersey Village
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2010-09531

Dear Ms. Wilson:

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# 388497 (Jersey Village PIR# 38).

The City of Jersey Village (the "city") received a request for thirty-nine categories of information, including two specified incident reports and any crime analysis reports, threat assessments, or crime prevention through environmental design surveys of the city, the city's extra territorial jurisdiction, or the area included in the proposed transit oriented development by the city's police department, other law enforcement agency, or private sector company or consultant.¹ You state that some of the requested information does not exist.² You state the city will release some of the requested information upon receiving instruction from the requestor regarding cost. You claim that the submitted information is excepted from

¹You inform this office that the city is seeking clarification regarding a portion of the request. Accordingly, should the requestor respond to the request for clarification, the city must seek a ruling from this office before withholding any additional responsive information from him.

²We note that the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public 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, such as section 418.177 of the Texas Homeland Security Act, chapter 418 of the Government Code (the "HSA"). Section 418.177 of the Government Code provides as follows:

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.

Gov't Code § 418.177. The fact that information may relate to a governmental body's security concerns or emergency management activities does not make the 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). 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 that the submitted vulnerability assessments of the city's water plant relate to risk assessments of and security measures needed to protect critical infrastructure, the city's public water supply, and prevent an act of terrorism or related criminal activity. Upon review of your arguments and the information at issue, we agree that this information is related to assessments maintained by the city of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Therefore, the city must withhold the vulnerability assessments under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

You seek to withhold the remaining information, which consists of two incident reports, under section 552.108 of the Government Code. Section 552.108(a) 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). Generally, a governmental body claiming section 552.108 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the incident reports relate to an ongoing investigation by the Harris County District Attorney of a former city police officer who compromised certain items of evidence. You state that this case has not gone to trial and that the incident reports may be introduced at trial. Further, you state that release of the incident reports may interfere with the investigation and prosecution of the case. Based on your representations, we conclude section 552.108(a)(1) is applicable to the information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, and you acknowledge, that section 552.108 is limited by section 552.108(c), which provides that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes, among other things, an identification and description of the complainant, a detailed description of the offense, and any property involved. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the city must withhold the vulnerability assessments under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

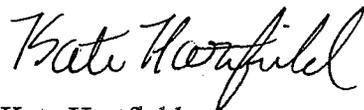
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

A handwritten signature in cursive script that reads "Kate Hartfield".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 388497

Enc. Submitted documents

c: Requestor
(w/o enclosures)