



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2011

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2011-13937

Dear Ms. Byles:

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# 431368 (PIR No. W009966).

The City of Fort Worth (the "city") received a request for information pertaining to all federal homeland security grants since 2004, including the statuses of expenditures for such grants and the specific uses of such grants.¹ You state the city has provided most of the requested information to the requestor. You claim portions of the submitted information are 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.

Section 552.108 of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect

¹You state, and provide documentation showing, the city sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

“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 effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of section 552.108, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 at 2 (1987) (release of forms containing information regarding when and where off-duty police officers will be working would unduly interfere with law enforcement), 252 (1980) (section 552.108 is 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).

You state the portions of the submitted information you have marked consist of details of specific law enforcement equipment used by the city’s police department (the “department”). You contend release of the information you seek to withhold “would divulge the intricate internal workings of the [department’s] methods, techniques, and strategies for” detecting and preventing crime or terroristic threats. You also assert release of the information at issue “would permit private citizens with criminal intentions to anticipate weaknesses in [the department], avoid detection, jeopardize officer safety, and . . . place officers at a disadvantage in detecting crime [while giving] clear advantages to criminals.” Based on your representations and our review, we find you have demonstrated the release of some of the information at issue, which we have marked, would interfere with law enforcement and crime prevention. Accordingly, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. We find, however, you have not demonstrated how release of the remaining information at issue, which consists mostly of dates and dollar amounts, would interfere with law enforcement and crime prevention. Consequently, you have failed to demonstrate the applicability of section 552.108(b)(1) of the Government Code to the remaining information at issue, and the city may not withhold any of the information on that basis.

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 made confidential by other statutes. You raise section 552.101 in conjunction with sections 418.177 and 418.181 of the Government Code for the remaining information you seek to withhold. These sections were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”), and make certain information related to terrorism confidential. 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.

Id. § 418.177. 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.

Id. § 418.181. The fact that information may relate to a governmental body's security measures or emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). Furthermore, the mere recitation of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any confidentiality statute, a governmental body asserting one of these sections must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You claim the remaining information at issue is confidential under section 418.177. Upon review, however, we find you have not demonstrated how this information was 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 relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. Consequently, the city may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

You generally assert the remaining information at issue is confidential under section 418.181. Upon review, however, we find you have not demonstrated the information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Consequently, the city may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.181 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 city must release the remaining information.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 431368

Enc. Submitted documents

c: Requestor
(w/o enclosures)