



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2011

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2011-14198

Dear Ms. Shortall:

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# 431550.

The City of Arlington (the "city") received a request for a list of all equipment, training, and assets purchased with homeland security grants since 2004; to include the date acquired, cost, purpose, location, and who has possession of the item at this time.¹ You state the city has released some information to the requestor. You claim portions of 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.

You assert the information you have marked is excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) 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) (quoting *Ex parte*

¹You state the city sought and received clarification of the information requested. *See* Gov't Code §552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Pruitt, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) 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 effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, 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 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (Gov’t Code § 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). Section 552.108(b)(1) is 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 explain the information you have marked pertains to equipment, assets, or systems purchased by the city with homeland security grants for security purposes. You inform us the information you have marked is contained in lists used by the city’s police and fire departments. You have submitted affidavits from the Assistant Police Chief and the Assistant Fire Chief (the “chiefs”). In the affidavits, the chiefs state the descriptions and serial numbers listed in the marked information could be used to search for the specific equipment, asset, or system used by the city. Further, they assert the remaining marked information could be used in conjunction with the Authorized Equipment List, which is published on the internet by the Federal Emergency Management Agency, to determine the specific equipment, asset, or system used by the city. The chiefs explain this information would give “insight into how to potential[ly] disable the [c]ity’s response to an act of terrorism or related criminal activity.” Based on your representations and our review of the information at issue, we find that release of most of the information you have marked would interfere with law enforcement. Accordingly, the city may withhold this information under section 552.108(b)(1) of the Government Code. However, we find the city has failed to demonstrate how release of the remaining information, which we have marked, would interfere with law enforcement. Accordingly, none of the remaining information may be withheld under section 552.108(b)(1).

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 section encompasses information protected by other statutes. As part of the Texas Homeland Security Act (“HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. You assert the remaining information is confidential under

section 418.181 of the Government Code, which provides “[t]hose 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 information may relate to a governmental body’s security concerns 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). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of the 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).

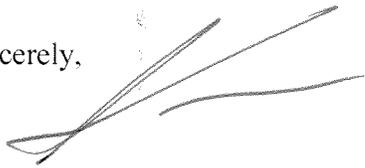
Upon review, we find none of the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, none of the remaining information is confidential under section 418.181 of the Government Code. Consequently, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 431550

Enc. Submitted documents

c: Requestor
(w/o enclosures)