



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2012

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2012-16732

Dear Ms. Middlebrooks:

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# 466974 (DPD PIR No. 2012-08645).

The Dallas Police Department (the "department") received a request for any existing budget documents regarding staffing in the City of Dallas's (the "city") 9-1-1 call center. You state you have released some information to the requestor. You claim the submitted information is 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 representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information is not responsive because it pertains to budget or staffing information for city departments other than the 9-1-1 call center. This decision does not address the public availability of the non-responsive information and that information need not be released in response to the present request.

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<sup>1</sup>We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Next, we note some of the submitted responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless made confidential under this chapter or other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(5). The information we have marked consists of budget information that constitutes information used to estimate the need for or expenditure of public funds and is subject to section 552.022(a)(5) of the Government Code. Although you claim section 552.108 of the Government Code for this information, we note section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver).* As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(5). Thus, the department may not withhold the budget information we have marked under section 552.108 of the Government Code. However, you also raise section 552.101 of the Government Code, which protects information made confidential under law. As such, we will consider your argument under section 552.101 for the responsive information that is subject to section 552.022, as well as for the information not subject to section 552.022. We will also address your argument under section 552.108 for the information not subject to section 552.022(a)(5).

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 section 418.176 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; [or]

(2) relates to a tactical plan of the provider[.]

*Id.* § 418.176(a)(1)-(2). The fact 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 responsive information pertains to the staffing requirements of an emergency response provider and is integral to the city's plan to prevent, detect, investigate, and respond to any report of terrorism or related criminal activity. You assert release of the information at issue could be used to frustrate the department's ability to quickly respond to emergencies in the field and compromise the safety of the general public, police officers, and other first responders. Based on your representations and our review, we find you have demonstrated some of the information at issue is collected, assembled, or maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and relates to an emergency response provider's staffing requirements. *See id.* § 418.176(a). Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with section 418.176 of the Government Code.<sup>2</sup> However, we find you have failed to demonstrate how the remaining information is confidential under section 418.176. Accordingly, the department may not withhold any portion of the remaining information under section 552.101 on that basis.

We now address your argument under section 552.108 of the Government Code for the information not subject to section 552.022. Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” *Id.* § 552.108(b)(1). 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*, 86 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) (construing statutory predecessor). This office has concluded section 552.108(b) excepts

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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), 508 (1988) (release of dates of future prison transfer could impair security), 252 (1980) (section 552.108 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.*, ORDs 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). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You argue the remaining information is protected by section 552.108(b)(1). However, we find the department has not established how release of the remaining information would interfere with law enforcement, and it may not be withheld under section 552.108(b)(1) on that basis.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The department must release the remaining responsive 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](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 Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 466974

Enc. Submitted documents

c: Requestor  
(w/o enclosures)