



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2012

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2012-17106

Dear Ms. Cost:

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# 469682 (PIR # 12-2691).

The Texas Department of Public Safety (the "department") received a request for all correspondence to and from the state discussing construction at the new department crime lab in Corpus Christi. You claim that 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 information.

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. Section 552.101 encompasses information protected by other statutes, such as section 418.181 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.181 provides as follows:

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.

Gov't Code § 418.181; *see generally id.* § 421.001 (defining critical infrastructure to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, and functions vital to the state or the nation"). The fact that information

may pertain to public or private infrastructure does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Moreover, the mere recitation of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.181 must be accompanied by an adequate explanation of 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 assert the Corpus Christi crime lab is critical infrastructure for the purposes of section 418.181 of the Government Code. You state the submitted information reveals technical details of particular vulnerabilities of the crime lab that could be used to compromise the security of the facility. Based on your representations and our review of the information at issue, we find the department has adequately explained how portions of the submitted information, which we have marked, are confidential under section 418.181 of the Government Code. We therefore conclude the department must withhold the information we have marked on that basis under section 552.101 of the Government Code.<sup>1</sup> However, upon review of the remaining information and the submitted arguments, we conclude you have failed to establish that the remaining information would reveal the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the department may not withhold any of the remaining information under section 552.101 in conjunction with section 418.181.

Section 552.108(b)(1) 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. *Id.* § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte 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." *See City of Ft. 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). This office has concluded section 552.108(b)(1) 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) (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). Section 552.108(b)(1) is not

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of the information at issue.

applicable, however, to generally known policies and procedures. *See, e.g.*, ORD Nos. 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).

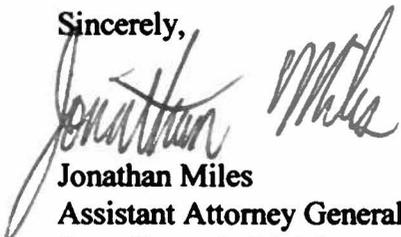
You state release of the remaining information would provide “wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information” concerning the Corpus Christi crime lab structure, building design, and location of evidence storage. Upon review, we find you have not demonstrated release of the remaining information would interfere with law enforcement or crime prevention. Consequently, the department may not withhold any of the remaining information at issue under section 552.108(b)(1).

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with section 418.181 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/bhf

Ref: ID# 469682

Enc. Submitted documents

c: Requestor  
(w/o enclosures)