



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2013

Mr. Ronald J. Bounds
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2013-08335

Dear Mr. Bounds:

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# 489177 (File No. JRey2).

The Corpus Christi Police Department (the "department") received a request for officer patrol logs for a specified period of time. You claim the requested information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we understand that you marked some of the submitted information as not responsive to the present request because it does not relate to the requested patrol log information. This ruling does not address the public availability of non-responsive information, and the department need not release non-responsive information in response to this request.

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.*

§ 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

We note the department received the request, sought clarification of the information requested, and received clarification on March 12, 2013. See Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). Thus, the department's ten-business-day deadline was March 26, 2013. The department requested this decision by United States mail meter-marked March 29, 2013. See *id.* § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). Accordingly, we find the department failed to comply with the requirements of section 552.301(b), and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the department's claims under sections 552.101 and 552.152 of the Government Code can provide compelling reasons for non-disclosure, we will consider your arguments under these exceptions.

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 other statutes make confidential, including section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 provides in relevant 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 staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency[.]

Id. § 418.176(a)(1). The fact that information may generally be related to 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). As with any confidentiality statute, a governmental body asserting this section 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 assert the responsive information reveals staffing requirements of the department, a law enforcement agency. You explain the responsive information relates to officers who are first

responders in emergency situations for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. You further explain the responsive information reveals officer cellular telephone numbers, officers' schedules broken down by geographic sectors throughout the city, and the name of each officer assigned to each sector. Upon review, we find you have demonstrated the responsive information relates to staffing requirements of the department and is assembled or maintained by the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, the department must withhold the responsive information under section 552.101 in conjunction with section 418.176 of the Government Code.¹

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 489177

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.