



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2013

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department
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Arlington, Texas 76004-1065

Mr. Steven E. Meyer
Assistant City Attorney
Arlington Police Department
P.O. Box 04-200
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OR2013-18195

Dear Ms. Bull and Mr. Meyer:

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# 501722 (APD # 12217, 12218, 12220, 12222, 12223, 12224, 12226, 12227, 12228, 12230, 12231, 12232, 12233, 12239, 12252, 12255, 12304, 12354, 12358, 12359).

The Arlington Police Department (the "department") received twenty requests for information related to a specified incident that occurred at Six Flags Over Texas. 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.¹

¹We assume the "representative sample" of records 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 those records contain substantially different types of information than that submitted to this office.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant requests for information because it was created after the department received the requests for information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to these requests.

Section 552.101 of the Government Code excepts from public 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 another statute makes confidential. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). These provisions make certain information related to terrorism confidential. 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; *see also id.* § 421.001(2) (defining critical infrastructure to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation”). The fact information may relate to a governmental body’s security measures 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 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 Six Flags Over Texas theme park is critical infrastructure because it is vital to the economy of the City of Arlington and the State of Texas. Thus, you state Exhibit F depicts technical and structural details of critical infrastructure that if released would enable terrorists to discover vulnerabilities where the most damage could be inflicted. Having considered your arguments and reviewed the information in Exhibit F, we find you have demonstrated Exhibit F reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, Exhibit F is subject to section 418.181 of the Government Code, and the department must withhold this information under section 552.101.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection,

investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state some of the responsive information, which you have marked and indicated, relates to an ongoing criminal investigation. Based on this representation, we find release of the information at issue would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we agree section 552.108(a)(1) is applicable to the responsive information you have marked and indicated.

We note section 552.108 of the Government Code does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88 (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the responsive information you have marked and indicated under section 552.108(a)(1) of the Government Code.²

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found., v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate any of the basic information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of the basic information under section 552.101 in conjunction with common-law privacy.

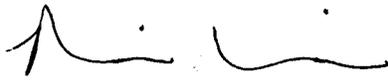
In summary, the department must withhold Exhibit F under section 552.101 in conjunction with section 418.181 of the Government Code. With the exception of basic information, the department may withhold the responsive information it has marked and indicated under section 552.108(a)(1).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/som

Ref: ID# 501722

Enc. Submitted documents

c: 15 Requestors
(w/o enclosures)