



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 15, 2014

Ms. Allison Bastian
Assistant City Attorney
Office of the City Attorney
City of Brownsville
1001 East Elizabeth Street, Suite 234
Brownsville, Texas 78520

OR2014-00954

Dear Ms. Bastian:

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# 511089.

The City of Brownsville (the "city") received a request for the name, job title, and cellular telephone number for any city employee who uses a cellular telephone paid for in whole or in part with city funds. You state you have released most of the requested information to the requestor. You claim some of 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. This exception encompasses information made confidential by other statutes, such as section 418.176 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 staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential. *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 section 418.176 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 claim the marked cellular telephone numbers in Exhibit B, which consist of the cellular telephone numbers of the city's fire chief, assistant fire chiefs, fire captain, fire marshall, EMS supervisor, acting emergency management administrator, public health director, and assistant city manager, are confidential under section 418.176. You state the assistant city manager also acts as the city's homeland security director and emergency management coordinator. You further state these individuals "would be at the forefront of efforts and operations" in the event of an act of terrorism or related criminal activity. You contend release of these individuals' cellular telephone numbers could hamper such efforts. Based on your representations and our review, we conclude the information at issue in Exhibit B was collected, assembled, or maintained by or for the city for the purpose of responding to an act of terrorism or related criminal activity and consists of a list of telephone numbers of emergency response providers. *See id.* § 418.176(a)(3). Accordingly, the city must withhold the cellular telephone numbers you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency 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). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state

laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). This office has concluded that 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), 508 (1988) (release of dates of prison transfer could impair security), 413 (1984) (release of sketch showing security measures to be used during execution would unduly interfere with law enforcement). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” ORD 506 at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You inform us the information in Exhibit A consists of the cellular telephone numbers of police officers and other employees of the city’s police department. You state public disclosure of this information could jeopardize officer safety and hamper police efforts. You further state the release of this information would “allow criminals to identify callers or track the network of calls and gain insight into general police functions, specific law-enforcement operations or direction, and serve to generally undermine the ability of the [police department] to enforce the law and prevent crime.” Based on your representations and our review, we find the city may withhold the cellular telephone numbers we have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate how release of any of the remaining information you have marked would interfere with law enforcement and crime prevention. Accordingly, the city may not withhold any of the remaining marked information under section 552.108(b)(1) of the Government Code.

In summary, the city must withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The city must release the remaining 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 511089

Enc. Submitted documents

c: Requestor
(w/o enclosures)