



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2014

Mr. Steven E. Meyer
Assistant City Attorney
Legal Division
City of Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2014-01542

Dear 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# 512350 (Arlington PD Reference No. 13344).

The Arlington Police Department (the "department") received a request for several categories of information related to aerial drones. You state the department has released some information. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

We first note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort

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 that those records contain substantially different types of information than that submitted to this office.

Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). 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). The department claims section 552.101 of the Government Code for the information at issue. Section 552.101 can provide a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of section 552.101 to the submitted information.

You seek to withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. 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 the HSA. Section 418.176 of the HSA 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 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 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).

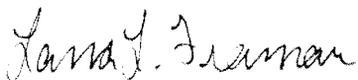
You state the information at issue pertains to the department’s use of unmanned aircraft systems to detect and respond to acts of terrorism or related criminal activity. You assert release of the information will interfere with law enforcement by divulging internal techniques for preventing and detecting crime. Further, you argue release of the information at issue will reveal law enforcement tactical strategies, compromise officer safety, and affect the ability of the department to detect and deter criminal activity. Upon review, we find the

department has demonstrated the majority of the information at issue was collected, assembled, or maintained by or for the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and relates to a tactical plan of the department. Accordingly, the department must withhold the information at issue under section 552.101 in conjunction with section 418.176 of the Government Code. However, we find you have failed to demonstrate the remaining information, which we have marked, relates to the staffing requirements of an emergency response provider or to a tactical plan of the provider. Therefore, the remaining information we have marked is not subject to section 418.176 of the Government Code, and the department must release it.

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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 512350

Enc. Submitted documents

c: Requestor
(w/o enclosures)