



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2014

Mr. Julian W. Taylor, III  
Deputy City Attorney  
City of Freeport  
P.O. Box 3073  
Freeport, Texas 77542-1273

OR2014-20869

Dear Mr. Taylor:

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# 543232.

The Freeport Police Department (the "department"), which you represent, received a request for information pertaining to all vehicles owned, operated, or maintained by the department; all firearms, body armor, vehicles, and ammunition used in field operations purchased during a specified period of time; and all equipment currently owned or maintained for use in Special Weapons and Tactics unit ("SWAT") operations or activities. You state the department does not possess information responsive to portions of the request.<sup>1</sup> You indicate you have released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative samples of information.<sup>3</sup>

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Although you also raise section 552.130 of the Government Code, you have not provided any argument to support this exception. Therefore, we do not address section 552.130. *See Gov't Code* §§ 552.301(e)(1)(A), .302.

<sup>3</sup>We 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 address the department's contention that complying with the request will be "like looking for a needle in a haystack." Although a governmental body is not required to create new information in response to a request, it does have a duty to make a good-faith effort to relate a request for information to information in existence at the time of the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *see also* Open Records Decision No. 561 at 8–9 (1990). A governmental body may not refuse to comply with a request on the ground of administrative inconvenience. *See Indus. Found v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). The department has submitted information that it indicates is responsive to the request. Accordingly, we will address the department's arguments against public disclosure of the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is 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[.]" Gov't Code § 552.108(b)(1). 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." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). 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) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 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 applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 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). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You state the information at issue details unmarked vehicles, field operations equipment, and SWAT operations equipment utilized by the department. You explain release of the information pertaining to the unmarked vehicles at issue would hinder investigations by detectives utilizing these vehicles. You further explain release of the information pertaining to the equipment at issue would allow potential criminals to identify weaknesses in the department's systems and responses, thwart police efforts, avoid detection, defeat police devices, and circumvent protective gear, which could place officers in imminent danger.

Based on your arguments and our review, we find you have demonstrated release of the information we have marked would interfere with law enforcement. Thus, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code.<sup>4</sup> However, we find you have not demonstrated how release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining information at issue under section 552.108(b)(1) 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 section encompasses information made confidential by other statutes. 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”). 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. The fact that 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 one of the confidentiality provisions of the HSA 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 remaining information contains critical tactical and operational information and release of this information would jeopardize the security of critical infrastructure in and around the City of Freeport. However, upon review, we conclude the department has failed to establish any of the remaining information identifies 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 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). An access device number is one that may be used to 1) obtain money, goods, services, or another thing of value, or 2) initiate a transfer of funds other than a transfer originated solely

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<sup>4</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

by a paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). Upon review, we find the department must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The department must withhold the information we have marked under section 552.136 of the Government Code. The department 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](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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/cbz

Ref: ID# 543232

Enc. Submitted documents

c: Requestor  
(w/o enclosures)