



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2014

Mr. Julian W. Taylor, III
Deputy City Attorney
City of Clute
Law Office of Wallace Shaw, P.C.
P.O. Box 3073
Freeport, Texas 77542-1273

OR2014-20874

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# 543251.

The Clute Police Department (the "department"), which you represent, received a request for information regarding ground vehicles, aircraft, watercraft, and SWAT and field operations equipment owned, operated, and/or maintained by the department during a specified time period. The department states it does not have information responsive to a portion of the request.¹ The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted representative sample of information.²

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

¹The 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).

²We 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.

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.

Next, we note the names of the police officers, which we have marked, are not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The information we have marked consists of information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The department must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* Although the department seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the information subject to section 552.022, which we have marked, under section 552.108. However, because section 552.101 of the Government Code protects information made confidential under law for purposes of section 552.022, we will address its applicability to the information subject to section 552.022. Further, we will address the department's arguments against disclosure of the remaining 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 (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section 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, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. 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).

The department states the information it has marked and indicated consists of a list of unmarked vehicles used by the department in undercover and SWAT operations and information regarding weapons and ammunition used by department officers. The department explains the release of the list of unmarked vehicles used specifically for undercover operations would help thwart law enforcement efforts and place officers’ lives in danger. Further, the department explains the release of the information regarding weapons and ammunition used by the department would assist a person intent on committing a criminal or terrorist act, jeopardize officer safety, and negatively impact the department’s ability to carry out its duties. Upon review, we find the release of the information at issue that is not subject to section 552.022 of the Government Code would interfere with law enforcement. Therefore, the department may withhold this information, which we have marked, under section 552.108(b)(1) of the Government Code.³

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

³As our ruling is dispositive, we need not address the department’s remaining arguments against disclosure of this information.

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 418.176 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:

...

(2) relates to a tactical plan of the provider[.]

Id. § 418.176(a). 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).

As noted above, the department contends the release of the information regarding weapons and ammunition used by the department would assist a person intent on committing a criminal or terrorist act, jeopardize officer safety, and negatively impact the department's ability to carry out its duties. Upon review, we find the information we have marked relates to a tactical plan of an emergency response provider and 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. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

The department further asserts release of the remaining information it has indicated would jeopardize the security of critical infrastructure in and around the City of Clute. However, upon review, we conclude the department has failed to establish the remaining information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the department may not withhold the remaining information at

issue under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information it has marked under section 552.130 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 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The department must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code. The department must release the remaining responsive 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 543251

Enc. Submitted documents

c: Requestor
(w/o enclosures)