



February 26, 2015

Ms. L. Carolyn Nivens  
Counsel for the City of League City  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2014-20875A

Dear Ms. Nivens:

This office issued Open Records Letter No. 2014-20875 (2014) on November 17, 2014. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on November 17, 2014. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 555240 (LCPD Ref. No. 3607-1, City Ref. No. 14-397).

The League City Police Department (the "department"), which you represent, received a request for four categories of information during a specified time period: (1) all grant applications made to the United States Department of Homeland Security (the "DHS"); (2) a list of equipment obtained through grants provided by the DHS; (3) grant applications or formal requests made to the United States Department of Defense (the "DOD") under the DOD 1033 program; and (4) a list of equipment obtained through the DOD 1033 program. You claim the submitted information is excepted from disclosure under

sections 552.101, 552.108, and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you contend and we agree the names of department officers within the submitted information, 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 need not release non-responsive information to the requestor.<sup>2</sup>

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.” *Id.* § 552.101. This section encompasses the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. Section 418.177 of the Government Code provides that information is confidential if it:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. The fact that information may be related to a governmental body’s security concerns or emergency preparedness does not make such 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 by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain 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).

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<sup>1</sup>We note the department did not raise section 552.152 of the Government Code as an exception to disclosure within ten business days of the date the department received the request. *See* Gov’t Code §§ 552.301(b), .302. However, because section 552.152 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will address the applicability of this exception to the submitted information, notwithstanding the department’s violation of section 552.301(b) in raising this exception. *See id.* § 552.302.

<sup>2</sup>As we are able to make this determination, we need not address your arguments against disclosure of the non-responsive information.

You assert the submitted responsive information is either collected, assembled, or maintained by the department for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity, or it relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. You state the information at issue pertains to the department's critical infrastructure, which is "essential for first responders to positively impact situations involving nuclear explosions, rescue and evacuation of persons, expansion of tactical operations capabilities, and in assisting other jurisdictions." We understand some of the information at issue identifies specific threats and risks to the department in responding to these situations. Upon review, we find the information we have marked relates to assessments of the risks or vulnerabilities of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity for purposes of section 418.177. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.<sup>3</sup> However, we find you have failed to demonstrate the applicability of section 418.177 to the remaining information. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

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[.]" *Id.* § 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, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that subsection 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). 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), 252 (1980) (section 552.108 of the Government Code is 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

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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).

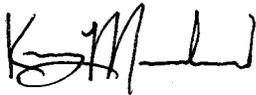
You contend the remaining responsive information, if released, would interfere with law enforcement or prosecution of crime. You state the information at issue contains descriptions and serial and model numbers for intelligence and information-sharing equipment, monitoring devices, response personal protective equipment, and vehicles used by the department's Combined Agency Response Team and Special Weapons and Tactics teams. You argue release of the information at issue could give citizens the ability to research and identify pieces of equipment and anticipate weaknesses in the department. Based on your representations and our review, we agree the release of the information at issue would interfere with law enforcement. Accordingly, the department may withhold the remaining responsive information under section 552.108(b)(1) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The department may withhold the remaining responsive information under section 552.108(b)(1) of the Government Code.

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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 555240

Enc. Submitted documents

c: Requestor  
(w/o enclosures)