



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 20, 2014

Ms. Meredith Riede  
Assistant City Attorney  
City of Sugar Land  
P.O. Box 110  
Sugar Land, Texas 77487-0110

OR2014-21174

Dear Ms. Riede:

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# 543760.

The City of Sugar Land (the "city") received a request for information pertaining to vehicles owned and operated by the city's police department (the "department"); an electronic database of, and specified information pertaining to all firearms, body armor, vehicles, and ammunition used in field operations acquired during a specified time period; and information pertaining to all equipment currently owned for use in specified activities. You state you will release some of the information to the requestor. You claim the remaining 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.

We note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the 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 relating to the receipt or expenditure of public funds by the city, which is subject to section 552.022(a)(3) of the Government Code. The city must release this information under section 552.022(a)(3) unless the information is made confidential under the Act or other law. Although you raise section 552.108 of the Government Code, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Thus, the city may not withhold the information subject to section 552.022 under section 552.108. However, because sections 552.101 and 552.152 of the Government Code make information confidential under the Act for purposes of section 552.022, we will address the applicability of these exceptions to the submitted information.<sup>1</sup> We will also address your argument under section 552.108 of the Government Code for the information not subject to section 552.022.

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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.152 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 assert a portion of the submitted information not subject to section 552.022(a)(3), which pertains to department field operations equipment, is subject to section 552.108(b)(1). You contend release of the information “would permit private citizens with criminal intentions to anticipate the weakness in the department, avoid detection, jeopardize officer safety, and place officers at a disadvantage in detecting crime while giving clear advantage to criminals.” Additionally, you assert, if a suspect or terrorist knew what type of equipment that a police officer possesses, it would “hinder a law enforcement officer’s ability to arrest persons, maintain control in situations warranting police involvement, and prevent injury to the officer.” Upon review, we find the release of the information we have marked would interfere with law enforcement. Thus, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. 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 city 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”). You assert the responsive information is made confidential by 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 [emergency response] provider[.]

*Id.* § 418.176(a)(2). 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 HSA. 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 argue the release of the information regarding field operations equipment and SWAT equipment used by the department could provide a potential terrorist with details regarding the capabilities and functionality of equipment used by police officers when responding to criminal and terrorist acts. You further contend the release of the information could provide a potential terrorist with details that could be used to circumvent the capabilities of the department. Upon review, we find the information we have marked relates to the tactical plan of an emergency response provider and is maintained by the city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, the city must withhold the information we have marked in the information subject to section 552.022 under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. However, upon review, we conclude the city 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 city 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.

You seek to withhold the identifying information of undercover vehicles. Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.152. You state release of the information pertaining to undercover vehicles would place undercover police officers' lives in danger. Thus, you represent the release of this information would subject these officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the information we have marked. Accordingly, we conclude the city must withhold the information we have marked under section 552.152 of the Government Code.

In summary, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The city 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 city must withhold the information we have marked under section 552.152 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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/ac

Ref: ID# 543760

Enc. Submitted documents

c: Requestor  
(w/o enclosures)