



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2014

Ms. Bobbi Kacz
City Attorney
City of Alvin
216 West Sealy Street
Alvin, Texas 77511

OR2014-21777

Dear Ms. Kacz:

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# 547797.

The Alvin Police Department (the "department") received a request for listings of certain information for all vehicles used by the department and certain types of information pertaining to equipment used by the department and the department's Special Weapons And Tactics or tactical response teams.¹ You state the department does not have information responsive to a portion of the request.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information consists of the names, duty assignments, and equipment assignments of members of the department. This information is not

¹You state the department sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S. W.3d 380,387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The 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).*

responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

Next, you state the department will withhold the information you have marked pursuant to section 552.130(c) of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We note section 552.130 does not apply to product serial numbers. Upon review, we find some of the information you have marked does not consist of information that is subject to section 552.130. As such, this information may not be withheld on that basis. Therefore, we conclude, with the exception of the product serial numbers you have marked, the department must withhold the information you have marked under section 552.130.

Section 552.108(b) 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[.]” *Id.* § 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 No. 531 at 3-4 (1989) (detailed guidelines regarding police department's use of force policy). 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

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You assert the submitted information, which pertains to field operations equipment and vehicles used by the department, is subject to section 552.108(b)(1). You contend release of the submitted information “would allow suspects to develop tactics to defeat the mission of law enforcement” and “would permit private citizens with criminal intentions to anticipate weaknesses in the . . . department, avoid detection, jeopardize officer safety, and place officers at a disadvantage in detecting crime while giving clear advantage to criminals.” Upon review, we find the release of some of the responsive information would interfere with law enforcement. Although you explain some of the vehicles at issue are used in undercover operations, you have not marked or otherwise indicated which of the department’s vehicles are used in undercover operations. Therefore, we must rule conditionally for this information. To the extent the vehicle information we have marked pertains to vehicles used in undercover operations, the department may withhold this information under section 552.108(b)(1) of the Government Code. If the vehicle information we have marked does not pertain to vehicles used in undercover operations, the department may not withhold this information under section 552.108(b)(1) of the Government Code. The department may withhold the remaining responsive information we have marked that does not pertain to vehicles under section 552.108(b)(1) of the Government Code.⁴ 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”). You assert the responsive information is made confidential by 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. *See also id.* § 421.001 (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). 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

⁴As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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).

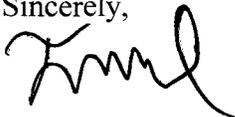
You argue the remaining responsive information “includes details of particular vulnerabilities of critical infrastructure to an act of terrorism.” You further contend the release of the remaining information “would create a vulnerability in the security of the City [of Alvin’s] critical infrastructure.” However, upon review, we conclude the department has failed to establish any of the remaining responsive 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 responsive information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

In summary, with the exception of the product serial numbers you have marked, the department must withhold the information you have marked under section 552.130. The department may withhold the information we have marked which pertains to department vehicles, to the extent this information pertains to vehicles used in undercover operations, as well as the information we have marked that does not pertain to vehicles under section 552.108(b)(1) 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

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Enc. Submitted documents

c: Requestor
(w/o enclosures)