



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 5, 2016

Mr. Richard A. McCracken
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-02873

Dear Mr. McCracken:

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# 597288 (COFW PIR# W047223).

The City of Fort Worth (the "city") received a request for information pertaining to specified purchase orders.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.108 of the Government Code. You indicate release of the submitted information may implicate the interests of a third party company and the Federal Bureau of Investigation (the "FBI"). Accordingly, you provide documentation showing you have notified the company and the FBI of their rights to submit comments to this office explaining why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the company. We have considered the submitted arguments and reviewed the submitted information.

¹We note the city sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You state the requestor modified the request in response to the estimate of charges on November 30, 2015. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

Initially, you state a portion of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-00174 (2015). In that ruling, we determined, in part, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code and may withhold the information we indicated under section 552.108(b)(1) of the Government Code. You state there has been no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the city must rely on Open Records Letter No. 2015-00174 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling; ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider the submitted arguments against disclosure for the submitted information, which is not encompassed by the previous ruling.

Next, we note the remaining 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 remaining information consists of purchase orders and records that are subject to section 552.022(a)(3). The city 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 city raises section 552.108 of the Government Code for this information, 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the city may not withhold the information subject to section 552.022(a)(3) under section 552.108. However, because information subject to section 552.022 may be withheld under section 552.104 of the Government Code, and because section 552.101 of the Government Code makes information confidential under the Act, we will consider the applicability of these exceptions to the information at issue.

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 418.176(a) provides, in part:

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). 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 state the information at issue relates to security equipment utilized by the city’s police department to prevent, detect, and respond to terroristic and criminal activities. You explain release of this information “will compromise law enforcement purposes by enabling terror or criminal suspects to anticipate weakness in law enforcement and alter their methods of operation in order to avoid detection.” Upon review, we find the information at issue relates to a tactical plan maintained by the city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Thus, the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.²

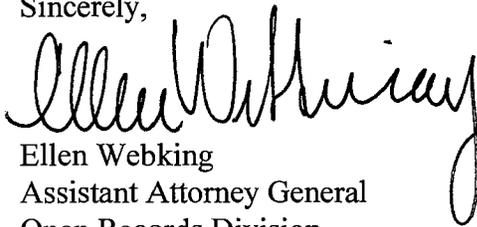
In summary, the city must rely on Open Records Letter No. 2015-00174 as a previous determination and withhold the identical information in accordance with that ruling. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 597288

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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