



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2006

Mr. Leslie Sweet
Legal Advisor
Dallas County Sheriff's Department
Frank Crowley Courts Building, 1st Floor
133 North Industrial Boulevard, LB-31
Dallas, Texas 75207-4313

OR2006-11312

Dear Mr. Sweet:

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# 260474.

The Dallas County Sheriff's Department (the "Department") received a request for all information relating to "take-home vehicles assigned to Dallas County Sheriff's employees, including but not limited to the make and model of the vehicle, the name and job title of the employee, annual mileage accrued by each vehicle and the date the vehicle was issued." You claim that the requested 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 have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

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. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.176 provides:

(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:

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

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

Gov't Code § 418.176. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *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 Texas Homeland Security Act 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). Upon review, we conclude that you have not demonstrated that any portion of the submitted information is maintained for the purpose of responding to an act of terrorism. Therefore, no portion of the submitted information may be withheld as confidential under section 418.176.

Next, we address your arguments under section 552.108 of the Government Code. Although you have not identified which subsection of section 552.108 you are asserting, we understand you to assert section 552.108(b)(1). Section 552.108(b)(1) 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." 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 section 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). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision

Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not 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. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

In this instance, you argue that the criminal investigators and the internal affairs investigators, whose information is contained in Attachment C, are “in unmarked vehicles for a law enforcement purposes” and that “much of their investigative work requires confidentiality and privacy in order to conduct their investigation and to protect witnesses and victims.” You further state that “identifying these employees and the vehicles that they are driving would compromise future investigations and crime prevention.” You also argue that identifying the fugitive officers, whose information is contained in Attachment D, would “compromise fugitive transportation plans and facilitate escape efforts.” You further state that releasing this information would “endanger fugitive officers.” Based on your arguments and our review of the submitted information, we conclude that you may withhold the information in Attachments C and D under section 552.108(b)(1) of the Government Code.

We note that the remaining submitted information, Attachment B, contains the home addresses of Department employees. Section 552.117(a)(2) of the Government Code excepts from disclosure “information that relates to the home address, home telephone number, or social security number” of a peace officer, or that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175. *See* Gov’t Code § 552.117(a)(2). Accordingly, we conclude that the Department must withhold the information that we have marked if it pertains to an individual who is a licensed peace officer.¹

We are uncertain which portions of the information that we have marked pertain to individuals who are licensed peace officers. Nevertheless, if any portion of the information we have marked does not pertain to a licensed peace officer, then the information may still be excepted from disclosure pursuant to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(a)(1) if the employee did not request confidentiality

¹Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. *See* Crim. Pro. Code art. 2.12.

for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that to the extent that any of the information we have marked relates to an individual who elected confidentiality for this information prior to the date that the Department received this request, the Department must withhold that information pursuant to section 552.117(a)(1) of the Government Code.

In summary, the Department may withhold Attachments C and D under section 552.108(b)(1) of the Government Code. The Department must withhold the information we have marked in Attachment B under section 552.117(a)(2), to the extent that it pertains to individuals who are licensed peace officers. The Department must withhold the remaining information we have marked in Attachment B under section 552.117(a)(1), to the extent that the employees whose information is at issue made a timely election under section 552.024. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/dh

Ref: ID# 260474

Enc: Submitted documents

c: Mr. Kevin Krause
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)