



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 6, 2007

Ms. Elizabeth Garza Goins  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2007-03336A

Dear Ms. Goins:

This office issued Open Records Letter No. 2007-03336 (2007) on March 27, 2007. We have examined this ruling and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on March 27, 2007. *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 (the "Act"))).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 273369.

The Texas Department of Public Safety (the "department") received a request for reports and statistical data related to Operation Rio Grande and Operation Linebacker. 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 representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We initially address your assertion that complying with portions of the request would “require manipulation of data that the [d]epartment does not currently do.” A request for public information that requires a governmental body to program or manipulate existing data is not considered to be a request for the creation of new information. *See* Gov’t Code § 552.231; *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App.—Eastland 2000, pet. denied) (plaintiffs’ request required manipulation of existing data rather than creation of new information); Open Records Decision No. 661 at 6-7 (1999). Thus, if information that is otherwise available to a governmental body can be programmed or manipulated for the purpose of responding to a request for information, then the governmental body has access to information that is responsive to that request.<sup>2</sup> Section 552.231 prescribes procedures that must be followed if, in responding to a request for information, a governmental body would be required to program or manipulate data. *See* Gov’t Code § 552.231(a) (written statement described by section 552.231(b) shall be provided to requestor if governmental body determines (1) that responding to request for information will require programming or manipulation of data and (2) that compliance with request is not feasible or will result in substantial interference with ongoing operations or that information could be made available in requested form only at costs that cover programming and manipulation). A governmental body that fails to follow the requirements of section 552.231 is not released by that section from its obligation to provide the requested information, or seek a ruling from this office as to whether the information is excepted from disclosure. *See Fish*, 31 S.W. 3d at 682. Thus, the department’s officer for public information carries the duty of promptly producing such public information when it is requested, unless the department wishes to withhold the information. *Id.* §§ 552.203, .221. As you timely submitted a request for a ruling as to whether the requested information is excepted from disclosure, we will address your arguments.

The department raises section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses sections 418.176 and 418.177 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.176 provides in 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:

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

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<sup>2</sup>We note that the Act defines “manipulation” as “the process of modifying, reordering, or decoding of information with human intervention.” Gov’t Code § 552.003(2). “Programming” is defined as “the process of producing a sequence of coded instructions that can be executed by a computer.” *Id.* § 552.003(4).

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

*Id.* § 418.176(a). Section 418.177 provides as follows:

Information is confidential if the information:

(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, to an act of terrorism or related criminal activity.

*Id.* § 418.177. The fact that information may be related to a governmental body's emergency response preparedness or security concerns 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).

Upon review of your arguments and the information at issue, we find that most of the submitted information consists of information that was 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 relates to a tactical plan of the provider. Accordingly, the department 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. However, the department has failed to demonstrate that the remaining information is related to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. *See id.* § 418.177. We conclude, therefore, that the department may not withhold any of the remaining submitted information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

We next address the department's assertions under section 552.108 of the Government Code, which 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); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws).

The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information relating to location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution), 409 (1984) (information regarding certain crimes protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (information whose disclosure would hamper efforts to detect forgeries of drivers’ licenses), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

A governmental body that relies on section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 531 at 2. Based on our review of the arguments and remaining submitted information, we find that the department has failed to explain in any detail how release of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the remaining submitted information is not excepted from public disclosure 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 418.176 of the Government Code. The remaining submitted information must be released.

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); *Texas 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. 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,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AC/sdk

Ref: ID# 273369

Enc. Submitted documents

c: Ms. Brandi Grissom  
El Paso Times  
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(w/o enclosures)