



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2007

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2007-10346

Dear Ms. Chang:

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# 286289.

The Houston Police Department (the "department") received a request for "memos/emails/reports containing the word[s] 'Immigration' or 'Immigrant' or 'Immigrants' or 'alien' or 'UDA' from 01/01/2006 to date." You state that the requestor subsequently narrowed the request to include only information on the computers of six named individuals. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the Department of Homeland Security, U.S. Immigration and Customs Enforcement ("ICE"). *See* Gov't Code § 552.304 (providing that 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." *Id.* § 552.101. This exception encompasses information protected by other statutes. ICE asserts that the information submitted in Exhibits 6 and 7 is excepted under section 552.101 in conjunction with the federal Freedom of Information Act ("FOIA"), section 552 of title 5 of the United States Code.

We note, however, that FOIA is applicable to information held by an agency of the federal government. The information at issue here is held by the department, an agency of the State of Texas. The fact that information held by a federal agency would be exempt from disclosure under FOIA does not necessarily protect that same information from public disclosure under Texas open records law when a Texas agency has possession of the information. *See* Attorney General Opinion MW-95 (1979) (FOIA exceptions apply to federal agencies, not to state agencies); Open Records Decision Nos. 496 (1988), 124 (1976).

This office has held that section 552.101 requires a local governmental entity that has obtained information from a federal agency to respect confidentiality imposed on the information by federal law. *See* Open Records Decision No. 561 at 7 n.3 (1990) (noting that federal authorities may apply confidentiality principles found in FOIA differently from way in which such principles are applied under Texas open records law). When information in the possession of a federal agency is deemed confidential by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. *See id.* at 7.¹

In this instance, ICE has shared the information in Exhibits 6 and 7 with the department. Further, ICE asserts that it considers the information at issue to be confidential under FOIA. Upon review, we find that the information in Exhibits 6 and 7 remains confidential in the possession of the department. *See* 5 U.S.C. § 552(b)(2)(high), (b)(6), (b)(7)(C), (b)(7)(E). We therefore conclude that the department must withhold that information under section 552.101 of the Government Code.

Section 552.101 also encompasses section 418.177 of the Texas Homeland Security Act, chapter 418 of the Government Code. 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, including critical infrastructure, to an act of terrorism or related criminal activity.

¹Likewise, this office has often said that a transfer of confidential information between agencies of state government does not destroy the confidentiality of the information. *See* Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978).

Gov't Code § 418.177. 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).

You assert that the information submitted as Exhibit 2 "was collected, assembled, or maintained by or for a governmental entity to prevent and detect potential acts of terrorism or related criminal activity." You further state that "Exhibit 2 relates to an assessment by the City [of Houston] and the [Federal Bureau of Investigation] of the risk of vulnerability of persons or property to an act of terrorism or related criminal activity." After reviewing the submitted arguments and the information at issue, we find that the submitted information in Exhibit 2 is maintained by the department for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. *See id.* § 418.177(1). Furthermore, we find the information constitutes a vulnerability assessment. *See id.* § 418.177(2). Accordingly, we conclude that the information in Exhibit 2 is confidential under section 418.177, and the department must withhold the information at issue under section 552.101 of the Government Code.

We next address the department's assertions under section 552.108(b)(1) of the Government Code, which excepts from public disclosure an internal record of a law enforcement agency 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." *Id.* § 552.108(b)(1). Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

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.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected); *see also*

Open Records Decision No. 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 the information at issue, we find that the release of the information in Exhibit 3 would interfere with law enforcement or crime prevention. Accordingly, the department may withhold the information in Exhibit 3 pursuant to section 552.108(b)(1). However, we find that the department has failed to demonstrate how release of the information in Exhibit 4, which is commonly available on the internet, would interfere with law enforcement or crime prevention. Accordingly, Exhibit 4 is not excepted from public disclosure under section 552.108(b)(1) of the Government Code.

In summary, the department must withhold the information in Exhibits 6 and 7 under section 552.101 of the Government Code and federal law. The information in Exhibit 2 is confidential under section 418.177 of the Government Code, and it must be withheld under section 552.101 of the Government Code. The department may withhold the information in Exhibit 3 pursuant to section 552.108(b)(1) of the Government Code. The remaining 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,

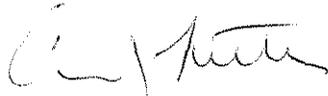
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 286289

Enc. Submitted documents

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