



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 21, 2009

Ms. Camila Kunau
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2009-14926

Dear Ms. Kunau:

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# 359047 (COSA File No. 09-0961).

The City of San Antonio (the "city") received a request for ten categories of information pertaining to the "High Crime" and "Graffiti" cameras (collectively the "cameras") operated by the city's police department (the "department"). You state the city has released some of the requested information. You also state that some of the requested information does not exist.¹ You claim that most of the submitted information is not public information subject to the Act. In addition and in the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

Code. We have considered the exceptions you claim and reviewed the submitted information.²

Initially, you assert that the submitted information pertaining to the technical details of the cameras does not consist of public information that is subject to disclosure under the Act. The Act applies only to "public information." See Gov't Code § 552.021. Section 552.002 of the Act defines public information as

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002. In Open Records Decision No. 581, this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. See Open Records Decision No. 581 at 6 (1990) (construing predecessor statute). We understand you to assert that, like the computer-related information at issue in that decision, the submitted information pertaining to the technical details of the cameras, including passwords, user names, and access codes, should be withheld because its release could potentially endanger the employees involved in the program and make the camera system vulnerable to attack. We note that the submitted information does not contain passwords, user names, or access codes. Upon review of your arguments and the information at issue, we find the submitted information pertaining to the technical details of the cameras has significance other than its use as a tool to maintain, manipulate, or protect public property. *Id.* We therefore conclude that all of the submitted information is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. See Gov't Code §§ 552.002 (a), .021.

Next, we note that portions of the submitted information, consisting of a purchase order and invoice for the cameras, are subject to section 552.022(a)(3) of the Government Code. Section 552.022(a)(3) provides for required disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a

²We assume that the "representative 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.

governmental body[,]” unless the information is expressly confidential under other law. *Id.* § 552.022(a)(3). Thus, the city must release the purchase order and invoice, which we have marked, under section 552.022(a)(3), unless that information is expressly confidential under other law. Although you seek to withhold the information at issue under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally) 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, the information at issue may not be withheld under section 552.108. However, you also claim that the information at issue is excepted from disclosure under sections 552.101 and 552.117 of the Government Code, which are “other law” for purposes of section 552.022. Accordingly, we will consider the applicability of these exceptions to the information subject to section 552.023(a)(3).

Next, we will address your claims under section 552.108 of the Government Code for the information not subject to section 552.022. Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov’t Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 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(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(1) protects information, the release of which would interfere with a particular criminal investigation or prosecution. You have not informed this office that the information not subject to section 552.022 relates to a particular criminal investigation or prosecution or how its release would interfere with a particular case. Thus, you have failed to demonstrate how release of the information at issue would interfere with the investigation

or prosecution of a particular crime. Accordingly, we conclude that the city may not withhold any of the submitted information under section 552.108(a)(1).

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.) (section 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) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 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, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You explain that the department maintains and operates security cameras at “strategic locations within the [c]ity, the purpose of which is to prevent and detect criminal activities, including graffiti.” You contend that the submitted video recording and photographs provide enough information to “correctly identify the placement and location of a graffiti surveillance camera.” You argue that release of this information, in addition to the remaining information pertaining to the cameras and their operation, would allow the public to anticipate weaknesses in the surveillance system, jeopardize the safety of the system and department officers, and undermine the ability of law enforcement personnel to detect, deter, and investigate crimes. Upon review of your arguments and the submitted information, we find that the city has demonstrated that release of the information we have marked would interfere with law enforcement and crime prevention. Accordingly, the city may withhold the marked information under section 552.108(b)(1) of the Government Code. However, we also find that the city has failed to demonstrate how release of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the city may not withhold any of the remaining information under section 552.108(b)(1).

We will now address your claims for the remaining information, including the information subject to section 552.022. 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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with sections 418.181 and 418.182 of the Government Code for the submitted information. These sections were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “THSA”). 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.

Section 418.182 provides in relevant part:

(a) Except as provided by Subsection[] (b), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

(b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.

Id. §§ 418.181, .182(a), (b). The fact that information may generally be related to critical infrastructure or a security system does not make the information *per se* confidential under the provisions of the THSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting one of these sections must adequately explain how the responsive information falls within the scope of the provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You explain that the department maintains and operates security cameras within the city for the purpose of preventing and detecting criminal activities. We understand you to assert that the cameras constitute critical infrastructure and that the remaining submitted information identifies the technical details of particular vulnerabilities of this critical infrastructure to an act of terrorism. *See 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). Upon review of your arguments and the remaining information, we find you have demonstrated that some of the information at issue, which we have marked, identifies the technical details of particular vulnerabilities of critical

infrastructure to an act of terrorism. The city must withhold this information under section 552.101 in conjunction with section 418.181 of the Government Code. We also find that you have not demonstrated that the remaining information reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See id.* § 418.181. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code on the basis of section 418.181 of the Government Code.

You also raise section 552.101 in conjunction with section 418.182 of the Government Code. However, we note that section 418.182(a) is specifically made subject to section 418.182(b). Accordingly, we find that the remaining information subject to section 552.022(a)(3), which pertains to the expenditure of funds by the city for the camera equipment, may not be withheld under section 552.101 of the Government Code on the basis of section 418.182. Further, we find that you have not demonstrated that the remaining information relates to the specifications, operating procedure, or location of a security system used to protect public or private property from an act of terrorism. *See id.* § 418.182. We therefore conclude that none of the remaining information may be withheld under section 552.101 in conjunction with section 418.182.

You assert the submitted names, phone numbers, and e-mail addresses of department volunteers and the names of the city employees who monitor the cameras are subject to common-law privacy, which is also encompassed by section 552.101. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has concluded that public disclosure of an individual's name, home address, and telephone number is not an invasion of privacy. *See* Open Records Decision Nos. 554 at 3 (1990). Upon review of your arguments and the information at issue, we find that the city has failed to demonstrate how the submitted names, phone numbers, and e-mail addresses of the department volunteers and the names of the city employees monitoring the cameras are highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

You also assert the submitted names, phone numbers, and e-mail addresses of the department volunteers are subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the present and former home addresses of a current or former official or employee of a governmental body who timely requests under section 552.024 that this information be kept confidential. Gov't Code §§ 552.117(a)(1), .024. We note that section 552.117 does not protect from disclosure information that concerns an individual

who is a volunteer for the city or department and not a current or former official or employee. Therefore, the city may not withhold information that pertains to volunteers under section 552.117. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

We note that the names and phone numbers of the department volunteers may be subject to section 552.127 of the Government Code.³ Section 552.127 excepts from disclosure information that “identifies a person as a participant in a neighborhood crime watch organization and relates to the name, home address, business address, home telephone number, or business telephone number of the person.” Gov’t Code § 552.127(a). We note that “neighborhood crime watch organization” is defined as a “group of residents of a neighborhood or part of a neighborhood that is formed in affiliation or association with a law enforcement agency in this state[.]” *Id.* § 552.127(b). Accordingly, to the extent the names and phone numbers of the department volunteers identify a person as a participant in a neighborhood crime watch organization that is formed in affiliation or association with a law enforcement agency in this state, the city must withhold the names and phone numbers under section 552.127. To the extent this information does not identify a person as a participant in a neighborhood crime watch organization that is formed in affiliation or association with a law enforcement agency in this state, this information may not be withheld on this basis.

Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *Id.* § 552.137(c). Accordingly, the city must withhold the e-mail addresses we have marked under section 552.137, unless the city receives consent for their release.

In summary, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. To the extent the names and phone numbers of the department volunteers identify a person as a participant in a neighborhood crime watch organization that is formed in affiliation or association with a law enforcement agency in this

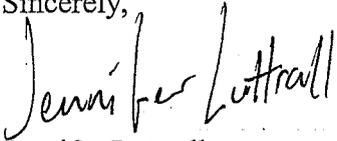
³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

state, the city must withhold the names and phone numbers under section 552.127 of the Government Code. The city must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the city receives consent for their release. The remaining information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 359047

Enc. Submitted documents

c: Requestor
(w/o enclosures)