



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2010

Lt. William T. Edmundson
Record Division
Pharr Police Department
1900 South Cage
Pharr, Texas 78577-6751

OR2010-01842

Dear Lt. Edmundson:

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# 367810.

The Pharr Police Department (the "department") received a request for nine categories of information relating to activities and operating policies of the department with respect to Operation Border Star. You state that the department has no responsive information with respect to a portion of the request.¹ You further state that the department has provided the requestor with other responsive information. You claim the remaining 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.²

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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.

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, such as section 418.177 of the Government Code. This section was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. 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.

Id. § 418.177. The fact that information may generally be related to a vulnerability assessment does not make the information *per se* confidential under section 418.177. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section 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 assert the submitted e-mails and BIAR reports are confidential under section 418.177 of the Government Code. Based on your arguments and our review of the submitted information, we find that portions of the submitted information, which we have marked, are confidential pursuant to section 418.177. Therefore, the department must withhold the portions of the information we have marked under section 552.101 in conjunction with section 418.177 of the Government Code. However, you have failed to demonstrate how the remaining information was collected, assembled, or maintained for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Furthermore, you have failed to demonstrate how the remaining information relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. Therefore, the remaining information may not be withheld under section 552.101 in conjunction with section 418.177 of the Government Code.

You also raise section 552.108 of the Government Code. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the

detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Although you state generally that release of the remaining information would hinder the department’s ability to detect, prosecute, and investigate these types of crimes, you do not explain whether any portion of the remaining information pertains to a specific criminal investigation or how release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, you have failed to demonstrate that section 552.108(a) of the Government Code applies to the remaining information. Therefore, it may not be withheld on that basis.

We note that the remaining information contains Texas motor vehicle record information.³ Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1), (2). We have marked the Texas motor vehicle record information that must be withheld under section 552.130 of the Government Code.

We also note the remaining information contains e-mail addresses. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). 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. We have marked the information that is generally subject to section 552.137. We note that some of the e-mail addresses we have marked appear to be the work e-mails of government employees. If these e-mail addresses are used by government employees in the course of their employment, they may not be withheld under section 552.137 of the Government Code and must be released to the requestor. However, if these e-mail addresses are the personal e-mail addresses of government employees, they must be withheld under section 552.137 of the Government Code, unless the owners of those addresses have affirmatively consented to their disclosure.

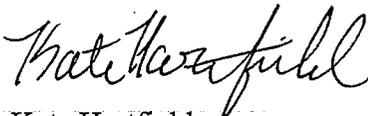
³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. With the exception of e-mail addresses used by government employees in the course of their employment, the department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code.⁴ 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 367810

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.