



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2014

Ms. Stephanie H. Harris
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2014-16083

Dear Ms. Harris:

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# 534402.

The Paris Police Department and the City of Paris (collectively, the "department") received two requests from the same requestor for (1) certain personnel records, including all records in the civil service files for three specified officers; (2) the bid proposal, equipment list, purchase orders for equipment, and an itemized list of the recording devices installed in any vehicle assigned to the specified officers or which they used in the normal course of their duties between January 1, 2013 and the date of the request; (3) grant authorization and funding for the Federal Grant Program funds utilized by the specified officers, its disbursement and required monthly reporting to certain entities mandated by the acceptance of the federal grant monies for the enforcement of pseudoephedrine regulations by the department; (4) all video or audio files created or recorded between August 1, 2013 and October 31, 2013 which pertain to two of the specified officers, and (5) the bid proposal, announcement, contract award certification, and all other documents related to the department's installation of video surveillance equipment, digital recording equipment, or closed circuit television equipment including, but not limited to, the schematics and blueprints that show where all the video equipment was proposed and eventually installed, and by which contractor it was installed and the contractor's Texas Private Security Board

Alarm Installer's Licensing data.¹ The department received a subsequent request from the same requestor for all dash camera recordings made by any employee of the department for the time period of 08:00 hours on September 24, 2013 to 23:59 hours on September 25, 2013.² You state you will release some of the requested information to the requestor. You state you have no responsive information for one of the three initially specified officers, no responsive information regarding recording devices installed in any vehicle assigned to the specified officers, and no responsive information regarding a grant for the enforcement of pseudoephedrine regulations. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.³ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Id.* § 552.301(b). In this instance, you state the department received the first requests for information on June 3, 2014. Accordingly, as you acknowledge, the department's ten-business-day deadline was June 17, 2014. However, the department requested a ruling from our office in an envelope bearing two meter-marks, one dated June 18, 2014, the other dated June 20, 2014. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the department failed to comply with section 552.301 of the Government Code with respect to the first requests.

¹You state the department sought and received clarification of portions of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²You state the requestor was required to make a deposit for payment of anticipated costs for this request under section 552.263 of the Government Code, which the department received on July 10, 2014. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

³We 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.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although you raise section 552.108 for Exhibits A-2 and B-1, which are responsive to the first requests, this section is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See Simmons*, 166 S.W.3d at 350 (section 552.108 not compelling reason to withhold information); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department may not withhold Exhibit A-2 or Exhibit B-1 under section 552.108. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the information at issue. We will also consider your arguments against disclosure of the timely submitted request.

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 section encompasses information protected by other statutes, such as section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.182 provides in part:

(a) Except as provided by Subsections (b) and (c), 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. § 418.182(a), (b). The fact information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *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 confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information in Exhibit B-1 discloses the type, number, and locations of security cameras on department property. You have also included an affidavit from the Paris Chief of Police who states the purpose of the cameras is to provide security for the department facility and to record interviews. He further states government facilities, especially those involved in law enforcement have been and will continue to be targets for terrorists. He states release of the camera locations will hamper law enforcement function and allow for the planning of an assault of the building or provide the criminal element possible escape or egress routes in or to the facility. Upon review, we find the information we have marked relates to the specifications and location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding recorded images of Texas Department of Public Safety video taken from Capitol security cameras relate to specifications of security system used to protect public property from act of terrorism or related criminal activity). Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. However, we note, and you acknowledge, some of the remaining information at issue is related to the expenditure of funds by the department for its video surveillance system. This information is subject to disclosure under section 418.182(b) of the Government Code and may not be withheld under section 552.101 in conjunction with section 418.182(a) of the Government Code. *See id.* § 418.182(b); *see also id.* § 418.182(a) (section 418.182(a) not applicable to information subject to section 418.182(b)). Moreover, you have not demonstrated how the remaining information at issue 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. Consequently, we find the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.

Section 552.101 also encompasses information protected by section 143.089 of the Local Government Code. You state the City of Paris is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the maintenance of two different types of personnel files for each police officer employed by a civil service city: one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), the officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took

disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143. *See* Attorney General Opinion JC-0257. In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113,122 (Tex. App.—Austin 2003, no pet.).

All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or are in the possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Id. In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made these records confidential. *See City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting

confidentiality under Local Gov't Code § 143.089(g) to “information reasonably related to a police officer’s or fire fighter’s employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state the information in Exhibit A-1 is contained within the department’s internal files maintained pursuant to section 143.089(g) of the Local Government Code. Although the requestor contends the requested training records should be maintained in the officers’ civil service files pursuant to section 143.089(a), we note the training records are not part of the specified items enumerated in sections 143.089(a)(1)-(3). Therefore, we find the information in Exhibit A-1 is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.108(a)(1) of the Government Code 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); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the recordings in Exhibit C relate to open and pending cases. Based on your representation and our review, we agree that section 552.108(a)(1) of the Government Code is applicable to the recordings in Exhibit C. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, department may withhold the recordings in Exhibit C under section 552.108(a)(1) of the Government Code.⁴

Section 552.108(b)(1) of the Government Code 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). 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 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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). Section 552.108(b)(1) is 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). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You seek to withhold the recordings in Exhibit D under section 552.108(b)(1). You generally contend release of this information would interfere with law enforcement operations and in the detection, investigation or prosecution of cases by disclosing police techniques, including investigative and interrogation techniques making it more difficult to conduct effective interrogations in the future. Upon review, we find you have not demonstrated how release of any of the information at issue would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the recordings in Exhibit D under section 552.108(b)(1).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked in Exhibit B pertains to closed cases that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) of the Government Code is applicable to the information at issue. Thus, the department may withhold the recordings you have marked in Exhibit B under section 552.108(a)(2).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). Upon review, we find the audio and video portions of some of the video recordings in Exhibit D, which we have marked, contain information subject to section 552.130. Additionally, we find most of the audio and video recordings you have marked in Exhibit B contain information subject to section 552.130. The audio portions of the recordings are intertwined with the video portions of the recordings. You state the department does not have the technological capability to redact the motor vehicle record information from the recordings. Accordingly, the department must withhold the recordings at issue in their entirety under section 552.130. However, upon review, we find some of the video recordings you seek to withhold in Exhibit B do not contain motor vehicle

record information; this information, which we have marked in the supporting documentation for release, is not excepted from disclosure under section 552.130 of the Government Code.

Section 552.101 also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the report does not already know their identities. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). For the informer's privilege to apply, the report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at (1990), 515 at 3-4. The privilege affords protection to individuals who report violations of statutes to criminal law enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)).

You claim one of the remaining videos in Exhibit D reveals the identity of a confidential informant for the department who was involved in an investigation of illicit drug and/or weapons sales. You inform us in both the audio and video recording, information is given as to the date, time, location, and other information which could easily be used to identify the confidential informant. Based on these representations and our review, we conclude the department may withhold the video recording we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). The recordings you have marked in Exhibit B contain audible social security numbers that are excepted from disclosure under section 552.147 of the Government Code. As previously noted, the audio and video portions of the recordings are intertwined, and you state the department does not have the technological capability to redact information from the recordings. Therefore, the department may withhold the recordings you have marked in Exhibit B in their entirety under section 552.147(a) of the Government Code.

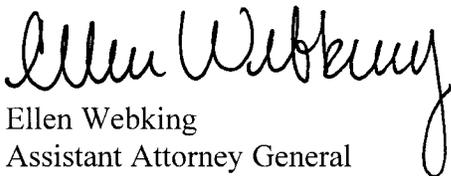
In summary, the department must withhold the information we have marked under section 552.101 in conjunction with section 418.182 of the Government Code. The department must withhold the information in Exhibit A-1 under section 552.101 in conjunction with section 143.089 of the Local Government Code. The department may withhold the recordings in Exhibit C under section 552.108(a)(1) of the Government Code. The department may withhold the recordings you have marked in Exhibit B under section 552.108(a)(2) of the Government Code. The department must withhold the recordings we have marked in Exhibit D under section 552.130 of the Government Code.

With the exception of the information we have marked for release, the department must also withhold the recordings you have marked in Exhibit B under section 552.130 of the Government Code. The department may withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department may withhold the recordings you have marked in Exhibit B in their entirety under section 552.147 of the Government Code. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID# 534402

Enc. Submitted documents

c: Requestor
(w/o enclosures)