



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2014

Ms. L. Carolyn Nivens  
Counsel for the City of League City  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2014-20875

Dear Ms. Nivens:

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# 542320 (LCPD Reference No. 3607-1).

The League City Police Department (the "department"), which you represent, received a request for four categories of information during a specified time period: (1) all grant applications made to the United States Department of Homeland Security (the "DHS"); (2) a list of equipment obtained through grants provided by the DHS; (3) grant applications or formal requests made to the United States Department of Defense (the "DOD") under the DOD 1033 program; and (4) a list of equipment obtained through the DOD 1033 program. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>We note the department did not raise section 552.152 of the Government Code as an exception to disclosure within ten business days of the date the department received the request. *See* Gov't Code §§ 552.301(b), .302. However, because section 552.152 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will address the applicability of this exception to the submitted information, notwithstanding the department's violation of section 552.301(b) in raising this exception. *See id.* § 552.302.

Initially, you contend and we agree the names of department officers within the submitted information, which we have marked, are not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the department need not release non-responsive information to the requestor.<sup>2</sup>

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. Section 552.101 encompasses information protected by other statutes, including federal law. On November 25, 2002, the president signed the federal Homeland Security Act (“HSA”). The HSA created the DHS and transferred the Transportation Security Administration (“TSA”), a new agency created in the Department of Transportation (“DOT”) the previous year to oversee the security of transportation, to DHS. *See* 6 U.S.C. §§ 111, 203.

In connection with the transfer of TSA to DHS, the HSA also transferred TSA’s authority concerning sensitive security information (“SSI”) under section 40119 of title 49 of the United States Code to section 114(r) of title 49 of the United States Code and amended section 40119 to vest similar SSI authority in the secretary of DOT.<sup>3</sup> Section 114(r) of title 49 states, in relevant part:

(1) Notwithstanding [the Federal Freedom of Information Act (the “FOIA”),] the Under Secretary [for Transportation Security, head of TSA] shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act . . . if the Under Secretary decides disclosing the information would –

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or

(C) be detrimental to the security of transportation.

49 U.S.C. § 114(r)(1). This provision authorizes the TSA’s Under Secretary to prescribe regulations that prohibit disclosure of information requested not only under the FOIA, but also under other disclosure statutes. *Cf. Public Citizen, Inc. v. Federal Aviation Admin.*, 988 F.2d 186, 194 (D.C. Cir. 1993) (former section 40119 authorized Federal Aviation

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<sup>2</sup>As we are able to make this determination, we need not address your arguments against disclosure of the non-responsive information.

<sup>3</sup>This ruling does not construe the parallel federal statutes and regulations that apply to DOT.

Administration administrator to prescribe regulations prohibiting disclosure of information under other statutes as well as under FOIA). Thus, the Under Secretary is authorized by section 114(r) to prescribe regulations that prohibit disclosure of information requested under the Act.

Pursuant to the mandate and authority of section 114 of title 49, TSA published regulations in title 49 of the Code of Federal Regulations that took effect June 17, 2004. *See* 69 Fed. Reg. 28066. Section 1520.1(a) of these regulations provides that the regulations govern the “maintenance, safeguarding, and disclosure of records and information that TSA has determined to be [SSI], as defined in § 1520.5.” 49 C.F.R. § 1520.1(a). Section 1520.7 states that the covered persons to which these regulations apply include, among others, to “[e]ach person who has access to SSI, as specified in § 1520.11.” *Id.* § 1520.7(j). Pursuant to section 1520.11(a), a person has a need to know SSI “[w]hen the person requires access to specific SSI to carry out transportation security activities approved, accepted, funded, recommended, or directed by DHS or DOT.” *Id.* § 1520.11(a). Section 1520.11(b)(1) further states that a local government employee, contractor, or grantee has a need to know SSI “if access to the information is necessary for performance of the employee’s official duties on behalf or in defense of” the interests of the local government. *Id.* § 1520.11(b)(1). Section 1520.11(b)(2) further states a local government employee, contractor, or grantee has a need to know SSI if the person is “acting in the performance of a . . . grant from” a federal government agency “if access to the information is necessary to performance of the . . . grant.” *Id.* § 1520.11(b)(2). Thus, the regulations in title 49 of the Code of Federal Regulations apply to the department.

As to the release of information by persons other than TSA, section 1520.9(a) of title 49 provides in part that a person to which these regulations apply has a duty to protect information and may disclose SSI “only to covered persons who have a need to know, unless otherwise authorized in writing by TSA, the Coast Guard, or the Secretary of DOT.” *Id.* § 1520.9(a)(2). Section 1520.9(a)(3) of title 49 further provides that those covered by the regulation must “[r]efer requests by other persons for SSI to TSA or the applicable component or agency within DOT or DHS.” *Id.* § 1520.9(a)(3). SSI is defined to include certain information obtained or developed in the conduct of security activities, the disclosure of which TSA has determined would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information obtained from any person, or be detrimental to the security of transportation. *Id.* § 1520.5(a). Section 1520.5(b) of title 49 specifically defines fifteen categories of SSI and provides SSI includes “[a]ny information not otherwise described in [section 1520.5] that TSA determines is SSI under 49 U.S.C. 114(s) or that the Secretary of DOT determines is SSI under 49 U.S.C. 40119.” *See id.* § 1520.5(b).

Some of the responsive information consists of information pertaining to grant applications made to and grant funds received from DHS. We understand the information at issue consists of SSI. Based on the statutory and regulatory scheme described above, and our

review, we conclude the decision to release or withhold the information at issue is not for this office or the department to make, but rather is a decision for the Under Secretary as head of the TSA. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law). Therefore, the department may not release the information at issue, which we have marked, at this time under the Act, but instead must refer the information to the TSA to make a determination concerning disclosure of that information.<sup>4</sup>

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, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that subsection 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that 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 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is 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). 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).

You contend the remaining responsive information, if released, would interfere with law enforcement or prosecution of crime. You state the information at issue contains descriptions and serial and model numbers for intelligence and information-sharing equipment, monitoring devices, response personal protective equipment, and vehicles used by the department’s Combined Agency Response Team and Special Weapons and Tactics teams. You argue release of the information at issue could give citizens the ability to

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<sup>4</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

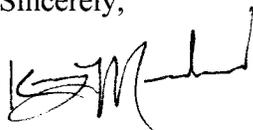
research and identify pieces of equipment and anticipate weaknesses in the department. Based on your representations and our review, we agree the release of the information at issue would interfere with law enforcement. Accordingly, the department may withhold the remaining responsive information under section 552.108(b)(1) of the Government Code.<sup>5</sup>

In summary, the department may not release portions of the responsive information, which we have marked, at this time under the Act, but instead must refer the information to the TSA to make a determination concerning disclosure of that information. The department may withhold the remaining responsive information under section 552.108(b)(1) of the Government Code.

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](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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 542320

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.