



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 19, 2014

Chief Gregory L. Grigg  
Deer Park Police Department  
2911 Center Street  
Deer Park, Texas 77536

OR2014-21070

Dear Chief Grigg:

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# 542537 (Ref. No. 190).

The Deer Park Police Department (the "department") received a request for (1) information related to all vehicles owned by the department, (2) information related to vehicles and specified equipment used in field operations during a specified time period, and (3) information related to equipment used in Special Weapons and Tactics operations. You claim the submitted 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.<sup>1</sup>

Initially, we note portions of the submitted information consists of the names of department officers. Thus, these portions are not responsive to the present request because they do not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, and the department need not release it in response to this request.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides, in pertinent part:

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<sup>1</sup>We 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.

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract, relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Some of the submitted information, which we have marked, consists of information in an account, voucher, or contract relating to the expenditure of funds by a governmental body subject to subsection 552.022(a)(3). Although you seek to withhold this information under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the information we have marked may not be withheld under section 552.108. You also claim section 552.101 of the Government Code, which protects information made confidential under other law, for the information subject to section 552.022(a)(3). Accordingly, we will address the applicability of section 552.101 to the information at issue and consider all of your arguments for the information not subject to section 552.022.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors that is maintained for internal use for matters relating to law enforcement or prosecution when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). 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* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. 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." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) 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.*, Open Records Decision Nos. 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 state the information not subject to section 552.022 of the Government Code, if released, would interfere with law enforcement. You state the release of the information at issue would allow private citizens and suspects to anticipate the department's weaknesses, undermine the department's efforts to effectuate the state's laws, and jeopardize the safety and security of the department's officers, first responders, and the public. You further state the release of the information at issue would allow suspects to obtain weapons that would overpower the department's officers' equipment. Based on your representations and our review, we find the release of some of the information at issue would interfere with law enforcement. Accordingly, the department may generally withhold the information we have marked under section 552.108(b)(1) of the Government Code.<sup>2</sup> However, you have not marked or otherwise indicated which, if any, of the department's vehicles are used in undercover operations. Therefore, we must rule conditionally. To the extent the information pertaining to vehicles we have marked is used in undercover operations, the department may withhold this information under section 552.108(b)(1) of the Government Code. If the information pertaining to vehicles we have marked is not used in undercover operations, the department may not withhold this information under section 552.108(b)(1) of the Government Code. The department may withhold the remaining information we have marked that does not pertain to vehicles under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated how any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining responsive information not subject to section 552.022 under section 552.108(b)(1) of the Government Code.

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. As part of the Texas Homeland Security Act (the "HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.176 of the Government Code provides, in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

...

(2) relates to a tactical plan of the [emergency response] provider[.]

*Id.* § 418.176(a)(2). 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 emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *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 these sections must adequately explain how the responsive information falls within the scope of the provisions. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You inform us the release of the remaining information would undermine police efforts to effectuate the laws of the state. You explain the release of information pertaining to ammunition, firearms, and body armor would jeopardize the safety of department officers and the public, in addition to providing suspects with the ability to overpower the department's equipment. Upon review, we find some of the remaining information relates to tactical plans of an emergency response provider maintained by the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.<sup>3</sup>

You assert the remaining information relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. Upon review, we find you have failed to demonstrate the applicability of section 418.177 to the remaining information. Accordingly, the department may not

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>4</sup> *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining responsive information.

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,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

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<sup>4</sup>The 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).

Ref: ID# 542537

Enc. Submitted documents

c: Requestor  
(w/o enclosures)