



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2014

Ms. Leticia Brysch
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2014-21121

Dear Ms. Brysch:

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# 542606 (Baytown PIR No. 3207).

The City of Baytown (the "city") received a request for three electronic lists of information pertaining to (1) all non-undercover vehicles, owned, operated, and maintained by the Baytown Police Department (the "department"); (2) the type, name, year acquired, and value for all firearms, body armor, vehicles, and ammunition used in field operations purchased or acquired from 2004 to the date of the request; and (3) the type, year acquired, and name for all equipment currently owned or maintained for use in SWAT operations or activities. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which is a representative sample.¹

¹We 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.

Initially, we note the secondary category of the request is for a listing of information related to all firearms, body armor, vehicles, and ammunition used in field operations purchased or acquired from 2004 to the date of the request. However, portions of Exhibit C, which you have submitted as responsive to the second category of the request, do not pertain to firearms, body armor, vehicles, or ammunition used in field operations by the city. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

You state the submitted vehicle list does not include the years acquired and costs of the vehicles, and the equipment report does not encompass all the requested data because the city does not have that information compiled within an electronic record. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request for information under the Act. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). A governmental body must make a good-faith effort, however, to relate a request to responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the city has made a good faith effort to relate this request to information the city maintains.

You state the requestor clarified his request for information on August 22, 2014. *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). The city states on September 5, 2014 it sought but did not receive a response to its request for additional clarification. As previously noted, a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. ORD 561. In this case, as you have submitted information responsive to the request for which you sought clarification and have raised exceptions to disclosure for this information, we will address the applicability of the claimed exceptions to this information.

We note the information in Exhibit C is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not exempted 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). The information in Exhibit C constitutes information in an account, voucher, or contract relating to the receipt or expenditure of funds by the city that is subject to section 552.022(a)(3). The city must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). Although the city raises section 552.108 of the Government Code for this information, section 552.108 is discretionary in nature and does not make information confidential under the Act. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold Exhibit C, which is subject to section 552.022(a)(3), under section 552.108. You also claim sections 552.101 and 552.152 of the Government Code, which make information confidential for purposes of section 552.022(a)(3). Therefore, we will determine whether any of the information in Exhibit C must be withheld under section 552.101 or section 552.152 of the Government Code. We will address your argument under section 552.108 for the information that is 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 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.*, ORD 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement.

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 contend Exhibits B and D contain information pertaining to all the vehicles and SWAT equipment owned by the city. We note Exhibit B excludes undercover vehicles. You argue release of this information “would interfere with law enforcement’s ability to effectively respond to criminal activity, and limit its crime prevention abilities.” You state the release of Exhibit D would allow criminals to “identify [the department’s] weaknesses and create a plan to capitalize on them[.]” Based on your representations and our review, we find you have demonstrated release of the information we have marked would interfere with law enforcement. Thus, the city may withhold the information we have marked, which is not subject to section 552.022 of the Government Code, under section 552.108(b)(1) of the Government Code.² However, we find you have not demonstrated how release of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the city may not withhold the remaining information 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 made confidential by other statutes. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.176(a) provides, in part:

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:

...

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

Id. § 418.176(a)(2). 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.

²As our ruling is dispositive, we need not address your other arguments against disclosure of this information.

Id. § 418.181. The fact that information may relate to a governmental body's security measures does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under one of the confidentiality provisions of the HSA must be accompanied by an adequate explanation of how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You claim the remaining information pertains to equipment, weapons, armor, vehicles, ammunition, and protective gear that, if released, would reveal "critical tactical and operational information that would render [the department] ineffective in protecting the public safety." Based on your arguments, and our review, we find the information, a representative sample which we have marked in Exhibit C, relates to a tactical plan of the provider. *See id.* § 418.176(a)(2). Accordingly, the city must withhold the information, a representative sample which we have marked in Exhibit C, under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.³

You assert the remaining information contains details of potential vulnerabilities of critical tactical and operational information, and release of this information would have catastrophic effects on critical infrastructure. However, upon review, we conclude the city has failed to establish any of the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. Upon review, we find you have not demonstrated how of the remaining information would subject an employee or officer of the city to a substantial risk of physical harm. Accordingly, the city may not withhold the remaining information under section 552.152 of the Government Code.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the city may withhold the information we have marked that is not subject to section 552.022 of the Government Code under section 552.108(b)(1) of the Government Code. The city must withhold the information, a representative sample of which we have marked in Exhibit C, under section 552.101 of the Government Code in conjunction with section 418.176 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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 542606

Enc. Submitted documents

c: Requestor
(w/o enclosures)