



February 27, 2015

Ms. Laura Russell  
Attorney  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2015-03911

Dear Ms. Russell:

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# 555425 (TPWD #2014-11-R45 & #2014-11-R46).

The Texas Parks and Wildlife Department (the "department") received a request for training records for two department task forces, copies of contracts for companies that train game wardens for two department task forces, and all documentation related to firearm discharges and shooting incidents in a specified area over a specified time period.<sup>1</sup> You state you will release some information to the requestor. 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>2</sup>

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<sup>1</sup>You state, and provide documentation showing, the requestor narrowed her request in response to a request for clarification. *See* Gov't Code § 552.222 (providing that 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 over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, you state, and we agree, the submitted information contains peace officer Texas Commission on Law Enforcement (“TCOLE”) identification numbers.<sup>3</sup> In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer’s TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE’s electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the officers’ TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.<sup>4</sup>

Next, we note some of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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 section 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 (1989) (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

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<sup>3</sup>The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

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

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 state some of the submitted responsive information contains “invaluable intelligence and operational information in specialized operations,” and “specific training procedures and tactics[.]” You contend release of the information would interfere with law enforcement efforts because it “would allow criminals to circumvent . . . prevention efforts and anticipate weaknesses in law enforcement operations.” You provide documentation from the major of the department’s Law Enforcement Criminal Investigation Division/Special Operations who states release of the information would create a safety risk for law enforcement personnel. Based on these arguments and our review, we agree release of some of the information, which we have marked and indicated, would interfere with law enforcement. Accordingly, the department may withhold the information we have marked and indicated under section 552.108(b)(1) of the Government Code.<sup>5</sup> However, we find you have not demonstrated how release of any of the remaining responsive information would interfere with law enforcement or crime prevention. Consequently, the department may not withhold any of 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 the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. Section 418.177 of the Government Code provides, in relevant part:

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.

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

*Id.* § 418.177. 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 section 418.177 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 seek to withhold some of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. Upon review, however, we find the department has failed to establish the remaining information at issue was collected, assembled, or is maintained by or for the department for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and 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 for purposes of section 418.177. Thus, the department has not established the applicability of section 418.177 of the Government Code to the remaining information at issue, and the department may not withhold the information under section 552.101 of the Government Code on that basis.

We note the remaining responsive information contains information subject to section 552.139 of the Government Code.<sup>6</sup> Section 552.139 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). Section 2059.055 of the Government Code provides in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency[.]

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<sup>6</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).

*Id.* § 2059.055(b)(1). We understand the user name we have marked in the submitted information can be used to access a department law enforcement database. Upon review, we find this information relates to computer network security. Accordingly, the department must withhold the information we have marked under section 552.139 of the Government Code.

In summary, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor. 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 552.139 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,

  
Joseph Behrke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 555425

Enc. Submitted documents

c: Requestor  
(w/o enclosures)