



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 8, 2015

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2015-06678

Dear Ms. Cost:

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# 559471 (DPS PIR #s 15-0273 and 15-0293).

The Texas Department of Public Safety (the "department") received two requests from two different requestors for purchasing information pertaining to a specified technology and five specified equipment names.<sup>1</sup> The department claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. The department states release of the information may implicate the proprietary interests of a third party. The department also indicates that release of the submitted information may implicate the interests of the Federal Bureau of Investigation (the "FBI"). Accordingly, the department states, and provides documentation showing, it notified the third party and the FBI of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open

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<sup>1</sup>We note the department sought and received clarification 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 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).

Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances); *see id.* § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from a third party and the FBI. We have also received comments from the requestors.<sup>2</sup> *See id.* We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, the department states a portion of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2012-16607 (2012). In that ruling, we determined the department may withhold the submitted information under section 552.108(b)(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the department may rely on Open Records Letter No. 2012-16607 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note the submitted information 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 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[.]

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<sup>2</sup>Although one of the requestors asserts that the third party failed to comply with section 552.305(e), we note that a violation of section 552.305 does not result in the legal presumption that the requested information is public under section 552.302 of the Government Code.

<sup>3</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.

Gov't Code § 552.022(a)(3). Thus, the submitted information is subject to section 552.022(a)(3) and the department must release this information unless it is made confidential under the Act or other law. *See id.* Although the department raises section 552.108 of the Government Code, this exception is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver).* Therefore, the department may not withhold the submitted information under section 552.108. However, the department also claims section 552.101 of the Government Code, which makes information confidential for purposes of section 552.022(a)(3). Therefore, we will address the applicability of section 552.101 of the Government Code to the submitted information.

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 [emergency response] provider[.]

*Id.* § 418.176(a)(2). 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).*

The department explains the submitted information relates to specialized electronic surveillance equipment used in the investigation and detection of crime. The department states release of this information “will compromise law enforcement purposes by enabling terror or criminal suspects to anticipate weakness in law enforcement and alter their methods

of operation in order to avoid detection.” Upon review, we find the submitted information relates to a tactical plan maintained by the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Thus, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.<sup>4</sup>

In summary, the department may rely on Open Records Letter No. 2012-16607 as a previous determination and withhold the identical information in accordance with that ruling. The department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/dls

Ref: ID# 559471

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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<sup>4</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

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