



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 20, 2015

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

OR2015-09869

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# 564323 (PIR No. 15-1024).

The Texas Department of Public Safety (the "department") received a request for information pertaining to sole-source, non-compete contracts with the department during a specified time period. 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 information.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-00527 (2015). In that ruling, we determined the department must withhold the information we marked under section 552.152 of the Government Code, may withhold the information we marked under section 552.108(b)(1) of the Government Code, and must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which this previous ruling was based. Accordingly, we conclude the department must continue to rely on Open Records Letter No. 2015-00527 as a previous determination and withhold or release 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). We will address your arguments for the information which was not responsive to the previous 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); see *City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. See, e.g., Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable 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 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You contend release of the submitted information “would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning specialized surveillance equipment utilized by the [d]epartment in the investigation and detection of crime[.]” You further argue release of this information would “jeopardize the future use of this specialized equipment . . . [, thereby compromising] investigative efforts and [allowing] criminals to employ techniques to defeat or detect this equipment, rendering it ineffective.” Upon review, we find you have demonstrated release of some of the information at issue would interfere with law enforcement. Accordingly, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, the department has failed to demonstrate how release of the remaining information would interfere with law enforcement, and the department may not withhold it under section 552.108(b)(1).

You seek to withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Texas Homeland Security Act (the “HSA”), chapter 418 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 exception encompasses information that is made confidential by other statutes, including the HSA. Section 418.176 of the HSA 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:

(1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers of the provider.

*Id.* § 418.176(a). 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 this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the remaining information “relates to tactical plans maintained by the [d]epartment for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity.” However, upon review, we find you have failed to demonstrate how any of the remaining information relates to the staffing requirements of an emergency response provider or to a tactical plan of the provider or consists of a list or compilation of pager or telephone numbers of the provider. Therefore, we find the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2015-00527 as a previous determination and withhold or release the identical information in accordance with that ruling. The department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The department must release the remaining 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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 564323

Enc. Submitted documents

c: Requestor  
(w/o enclosures)