KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 27, 2015

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2015-10271

Dear Mr. Kopp:

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# 566701(COSA File Nos. W066947 and W066948).

The City of San Antonio (the "city") received two requests from the same requestor for information pertaining to a specified report and specified personnel records pertaining to two named police officers. You state the city does not have information responsive to the request for the specified personnel records of one of the named police officers.[1] You also state the city will release some of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.[2]

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[1]We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

[2]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 that those records contain substantially different types of information than that submitted to this office.

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. Section 552.101 of the Government Code encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 provides information that "relates to a motor vehicle accident reported under [chapter 550]" is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. Transp. Code § 550.065(a)-(b). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of $1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). A governmental entity may release information related to a reported accident only in accordance with subsections (c) and (e). *Id.* § 550.065(c), (e). Section 550.065(c)(4) provides a governmental entity shall release such information to a person who provides two of the following three pieces of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific address or the highway or street where the accident occurred. *Id.* § 550.065(c)(4).

In *City of San Antonio v. Abbott*, the court of appeals considered the applicability of section 550.065 to certain information related to an accident. 432 S.W.3d 429 (Tex. App.—Austin 2014, pet. denied). The information at issue consisted of call-for-service and dispatch logs, and the requestor did not provide the requisite information pursuant to section 550.065(c)(4) to obtain the logs. The city argued the plain meaning of the phrase, "information that . . . relates to a motor vehicle accident" in section 550.065 includes *any* information pertaining to an accident reported under chapter 550, and thus, encompasses the information in its logs. Thus, the city contended the logs are confidential because the information relates to motor vehicle accidents reported under chapter 550. The court of appeals agreed with the city's interpretation of section 550.065. The court held the phrase "relates to" is "very broad" and the Legislature's use of the phrase "has the effect of broadening the scope of [s]ection 550.065 to render more than the actual accident reports confidential." *Id.* at 432. Because the court found the language in section 550.065 to be unambiguous and encompass more than the actual accident report required to be filed under chapter 550, it concluded the city's call-for-service and dispatch logs are confidential under section 550.065(b) of the Transportation Code. Relying on the court's interpretation of the broad scope of section 550.065, we construe the converse to be true when the requestor does provide the requisite information pursuant to section 550.065(c)(4). Thus, based on the court's rationale, when a person provides two of the required pieces of information to a governmental entity, it must release any information that relates to a motor vehicle accident required to be reported under chapter 550. Such a release is not limited to the accident report itself. *Id.* at 433.

Here, some of the submitted information pertains to a motor vehicle accident required to be reported under chapter 550 because it resulted in injury to or the death of a person or damage to the property of a person to the apparent extent of $1,000 or more, and the requestor has provided the city with the requisite information. Although the city asserts section 552.108 to withhold the submitted information, information expressly made public by statute may not

be withheld from the public under the general exceptions to public disclosure under the Act. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestor's statutory access under section 550.065(c)(4) prevails and the city may not withhold the information pertaining to the accident under section 552.108 of the Government Code.

We note, however, the city raises section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code for portions of this information. Section 552.101 of the Government Code also encompasses section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 provides in 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;
> >
> > (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.

Gov't Code § 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 section 418.176 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).

The information at issue includes automatic vehicle locator ("AVL") records. You state the AVL records are "collected, assembled[,] and maintained by the [city] for the purpose of preventing, detecting, responding to[,] or investigating an act of terrorism or related criminal activity." You further state the AVL records "ensure that the location of [city police] officers is known at all times . . . through tracking of marked patrol units." You also state the AVL "records reflect patterns of officer deployment and varying methods of response and associated response times in real-time." Upon review, we find you have demonstrated the AVL records relate to the city's staffing requirements and tactical plan, and are maintained by the city for the purpose of preventing, detecting, responding to, or investigating an act of

terrorism or related criminal activity. Therefore, we conclude the AVL records are confidential under section 418.176(a) of the Government Code. However, we find you have failed to demonstrate the remaining information is maintained by the city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, none of the remaining information is confidential under section 418.176 of the Government Code.

Because some of the information pertaining to the accident is specifically protected from public disclosure by section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code, we find there is a conflict between this provision and the access provided under section 550.065(c)(4) of the Transportation Code.

Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See id.* § 311.026(b); *see also City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Section 550.065(c)(4) provides a requestor with access to all information relating to a motor vehicle accident reported under chapter 550 when the requestor provides the requisite information. Transp. Code § 550.065(c)(4); *see City of San Antonio*, 432 S.W.3d at 432-433. In contrast, section 418.176(a) of the Government Code specifically protects information relating to staffing requirements, tactical plans, and a list or compilation of pager or telephone numbers of an emergency response provider that were collected, assembled, or maintained by or for a governmental entity for the purpose of responding to an act of terrorism or related criminal activity. Furthermore, section 418.176 has its own release provisions, which specifically permit release to certain parties and in certain circumstances that do not include the requestor in this instance. *See* Gov't Code § 418.183 (providing for disclosure of information confidential under section 418.176 in certain instances). We therefore conclude the confidentiality provided by section 418.176(a) is more specific than the general right of access provided by section 550.065. Thus, the city must withhold the submitted AVL records under section 552.101 of the Government Code in conjunction with section 418.176(a) of the Government Code.

You claim the remaining information, which consists of the personnel records of one of the named officers, is subject to section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the personnel records relate to a pending criminal investigation. Furthermore, the information at issue reflects the personnel records at issue relate to the arresting officer in the matter giving rise to the pending investigation. Based upon this representation and our

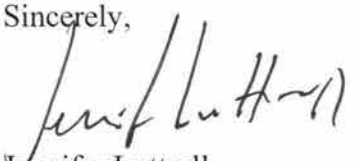
review, we find release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold the submitted personnel records under section 552.108(a)(1) of the Government Code.[3]

In summary, the city must withhold the submitted AVL records under section 552.101 of the Government Code in conjunction with section 418.176(a) of the Government Code. The city may withhold the submitted personnel records under section 552.108(a)(1) of the Government Code. The remaining information must be released pursuant to section 550.065(c)(4) of the Transportation 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 566701

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[3]As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.