



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 17, 2015

Ms. Michele Freeland
Legal Assistant
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-19478

Dear Ms. Freeland:

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# 579779 (PIR No. 15-3159).

The Texas Department of Public Safety (the "department") received a request for all department purchase orders 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, 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[.]

Gov't Code § 552.022(a)(3). The submitted information contains purchase order information that is subject to section 552.022(a)(3). The department must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* Although the department raises section 552.108 of the Government Code for this information, 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 information at issue under section 552.108. However, section 552.101 of the Government Code can make information confidential for purposes of section 552.022(a)(3). Further, we note portions of the submitted information are subject to section 552.130 of the Government Code, which also makes information confidential under the Act.¹ Therefore, we will determine whether any of the information subject to section 552.022(a)(3) must be withheld under these exceptions.

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:

- (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 [emergency response] provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

¹The 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. § 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).

You contend release of the submitted information "would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning . . . specialized . . . 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 must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. However, we find you have failed to establish the remaining information was collected, assembled, or maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and relates to the staffing requirements, or a tactical plan of an emergency response provider, or consists of a list or compilation of pager or telephone numbers of an emergency response provider. *See id.* § 418.176(a). Therefore, the remaining information is not confidential under section 418.176, and the department may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the department must withhold the motor vehicle record information in the remaining information under section 552.130 of the Government Code.

In summary, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The department must withhold the motor vehicle record information in the remaining information under section 552.130 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,

A handwritten signature in cursive script that reads "Britni Fabian".

Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 579779

Enc. Submitted documents

c: Requestor
(w/o enclosures)