



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2015

Mr. Donald R. Stout
Counsel for the City of Midlothian
Colvin & Stout, P.C.
P.O. Box 597
Ennis, Texas 75120

OR2015-19792

Dear Mr. Stout:

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# 582256.

The Midlothian Police Department (the "department"), which you represent, received a request for specified policies that were in effect on a specified date and the names of, and hours worked by, any female department employees who were on duty on that date. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed 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 exception encompasses information that other statutes make confidential, including section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 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 staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

Id. § 418.176(a)(1)-(2). 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).

We understand you to assert the requested information reveals staffing requirements or relates to a tactical plan of the department, which is a law enforcement agency. You argue release of the hours of service and policies and procedures of department employees would place department officers in the way of harm. Upon review, we find some of the submitted information relates to staffing requirements of an emergency response provider that is maintained by a law enforcement agency for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Thus, we find section 418.176 applies to this information, which we have marked. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.¹ However, we find you have not demonstrated any of the remaining information relates to staffing requirements of an emergency response provider. Further, we find you have not demonstrated the remaining information relates to a tactical plan of an emergency response provider. Thus, you have not demonstrated the applicability of section 418.176 to any of the remaining information. Accordingly, 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.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540

¹As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note the scope of a public employee's privacy is narrow. See Open Records Decision No. 423 at 2 (1984). Upon review, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. See Gov't Code § 552.117(a)(1). Upon review, we find no portion of the remaining information consists of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former employee of the department. Accordingly, the department may not withhold any of the remaining information under section 552.117(a)(1) of the Government Code.

You also seek to withhold the remaining information under section 552.152 of the Government Code. Section 552.152 provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. As noted above, you argue release of the policies and procedures of department employees would place department officers in the way of harm. Upon review, we find you have not demonstrated the release of any of the remaining information would subject an employee of the department to a substantial threat of physical harm. Thus, the department may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 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, 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 black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a large initial "C" and "M".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 582256

Enc. Submitted documents

c: Requestor
(w/o enclosures)