



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2015

Ms. Danie Huffman
Public Information Officer
County of Parker
Parker County Sheriff's Office
129 Hogle Street
Weatherford, Texas 76086

OR2015-20189

Dear Ms. Huffman:

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# 580918.

The Parker County Sheriff's Office (the "sheriff's office") received a request for six categories of information pertaining to equipment obtained from the United States Department of Defense (the "department"). You state the sheriff's office has no information responsive to a portion of the request.¹ You claim some of the submitted information is not subject to the Act. In the alternative, you claim this information and the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code.² We have considered the submitted arguments and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Although you claim the submitted information is excepted under section 552.301 of the Government Code, we note section 552.301 is not an exception to disclosure under the Act. *See Gov't Code* § 552.301 (providing procedural requirements for requesting ruling).

Initially, you assert the user name and password information you have marked are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform us the user name and password information have no significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we find the user name and password information you have marked do not constitute public information under section 552.002 of the Government Code. Therefore, we conclude this information is not subject to the Act and need not be released to the requestor.³

Next, we note some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(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 remaining information contains information in an account, voucher, or contract that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(3) under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception 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 information subject to section 552.022(a)(3), which we have marked, may not be withheld under section 552.108 of the Government Code. However, because sections 552.101 and 552.117 of the Government Code can make information confidential under the Act, we will consider your arguments under these sections for the information subject to section 552.022(a)(3). Further, we will address your arguments against disclosure for the remaining information.

³As we are able to make this determination, we need not consider your remaining arguments against disclosure of this information.

Section 552.108(b)(1) of the Government Code is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 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). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 508 (1988) (release of dates of prison transfer could impair security), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the information that is not subject to section 552.022 pertains to equipment obtained by the sheriff’s office from the department’s Law Enforcement Support Office through the department’s 1033 Surplus Property Program. You state release of the information at issue would allow an individual to “know the weapons [sheriff’s office] officers carry and then use strategies and tactics in an attempt to counteract or deter [sheriff’s office] efforts, or worse, use the information against [sheriff’s office] officers.” Based on your representations and our review, we find you have demonstrated that release of some of the information at issue would interfere with law enforcement or crime prevention. Therefore, the sheriff’s office may withhold the information we have marked under section 552.108(b)(1) of the Government Code.⁴ However, we find you have failed to demonstrate any of the remaining information at issue would interfere with law enforcement

⁴As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

or crime prevention. Accordingly, the sheriff's office may not withhold the remaining information that is not subject to section 552.022 under section 552.108(b)(1) 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 section encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the "HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.177 provides as follows:

Information is confidential if the information

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. The fact that information may be related to a governmental body's security concerns or emergency preparedness does not make such 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). Moreover, 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 section 418.177 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 state the remaining information pertains to equipment obtained by the sheriff's office from the department's Law Enforcement Support Office through the department's 1033 Surplus Property Program. Upon review, we find you have failed to demonstrate any of the remaining information relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity for purposes of section 418.177. Therefore, the sheriff's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number

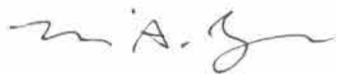
of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See id.* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, we find none of the remaining information consists of the home address, home telephone number, emergency contact information, and social security number of a peace officer. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.117(a)(2) of the Government Code.

In summary, the user name and password information you have marked is not subject to the Act and need not be released to the requestor. The sheriff's office may withhold the information we have marked section 552.108(b)(1) of the Government Code. The sheriff's office 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 580918

Enc. Submitted documents

c: Requestor
(w/o enclosures)