



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2015

Mr. Evaristo Garcia, Jr.
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2015-22125

Dear Mr. Garcia:

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# 583987 (McAllen PIR No. W020137-080515).

The City of McAllen (the "city") received a request for all information regarding the location, amount, and types of cameras used to monitor public areas. 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.

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, such as section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.182 provides in part:

- (a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

(b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.

Id. § 418.182(a), (b). The fact information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted information is “part of the city’s security system and relates to specifications, operating procedures, or location of the security system cameras that are used to protect the public from acts of terrorism or related criminal activity.” You contend releasing the information at issue would reveal the quality and capability of the cameras along with areas that are not in view of the camera. Thus, you argue this information could “allow a person to avoid or curtail the monitored routes and aid in the act of terrorism or related criminal activity.” Based on your representations and our review, we find the city must withhold most of the submitted information under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.¹ *See generally* *Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no. pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway, because specifications of security system included cameras’ capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). However, we note some of the submitted information, which we have marked for release, is related to the expenditure of funds by the city for its video surveillance system. This information is subject to disclosure under section 418.182(b) of the Government Code and may not be withheld under section 552.101 in conjunction with section 418.182(a) of the Government Code. *See id.* § 418.182(b); *see also id.* § 418.182(a) (section 418.182(a) not applicable to information subject to section 418.182(b)). Moreover, you have not demonstrated how the remaining information at issue relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Consequently, we find the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.

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

Section 552.101 of the Government Code also encompasses information made confidential by judicial decision and the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm. *Id.* In applying this standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119. Upon review, we conclude you have failed to demonstrate the applicability of the common-law physical safety exception to any of the remaining information. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

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 generally assert the remaining information is excepted under section 552.108(a)(1) because it related to the detection, investigation, or prosecution of criminal activity. However, you do not inform us the information at issue pertains to any specific ongoing criminal investigation or prosecution, nor have you explained how release of the information would interfere in some way with the detection, investigation, or prosecution of a specific crime. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1) to the remaining information. Accordingly, the city may not withhold the remaining information under section 552.108(a)(1) of the Government Code.

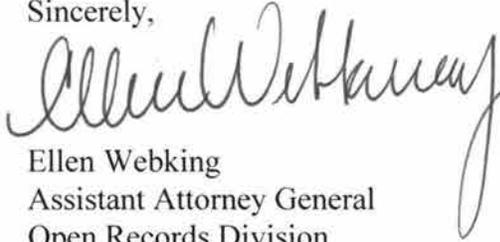
In summary, with the exception of the information we have marked for release, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code

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,

A handwritten signature in cursive script, appearing to read "Ellen Webking". The signature is written in black ink and is positioned to the right of the typed name.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 583987

Enc. Submitted documents

c: Requestor
(w/o enclosures)