



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2015

Ms. Molly Cost
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-24210

Dear Ms. Cost:

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# 587789 (PIR# 15-4441).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a named department employee and information pertaining to an incident involving the requestor. You indicate the department released some information. You claim portions of the submitted information are 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 exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with 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:

- (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.

Id. § 418.182(a). 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 contend the submitted video recording is confidential under section 418.182. You explain the submitted video recording was recorded on the security system at the Texas State Capitol grounds (the "capitol"). You inform this office the security system at issue is used to protect the capitol from terrorism or related criminal activity. Further, you explain specifications of a security system include the capabilities of a system's cameras, and release of the submitted video recording would demonstrate the capabilities of the security system at the capitol. Additionally, you state release of the submitted video recording would reveal the number and location of the security cameras in specified areas. Based on your representations and our review of this information, we conclude the department has demonstrated the information at issue relates to the specifications, operating procedures, or location of a security system used to protect public property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding video recording from security camera in capitol confidential under section 418.182 of HSA because video recording revealed capabilities of capitol security system through characteristics, quality, and clarity of images recorded). You state the exceptions in subsections (b) and (c) of section 418.182 of the Government Code are not applicable to the information at issue. Accordingly, the department must withhold the submitted video recording under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (Gov't Code § 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). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.,* Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures.

See, e.g., Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

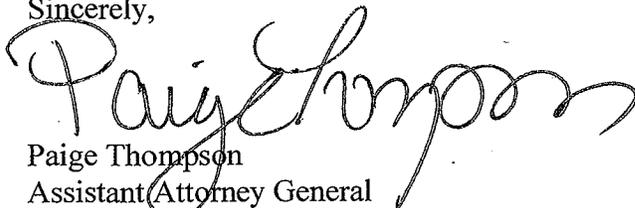
The department explains the remaining information is “an official documentation of observed behavior that may be indicative of intelligence gathering or pre-operation planning to terrorism, criminal, or other illicit intention.” The department states the remaining information is used by law enforcement officers “to aid in the collection and investigation of information based on reasonable suspicion of involvement in criminal activities.” The department argues release of this information would “provide wrong-doers, terrorists, and other criminals with invaluable information concerning techniques used by law enforcement to detect, investigate, and prevent criminal activity.” Upon review, we find the department has demonstrated release of the remaining information would interfere with law enforcement. Thus, the department may withhold the remaining information under section 552.108(b)(1) of the Government Code.

In summary, the department must withhold the submitted video recording under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The department may withhold the remaining information under section 552.108(b)(1) 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 587789

Enc. Submitted documents

c: Requestor
(w/o enclosures)