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ATTORNEY GENERAL OF TEXAS

March 14, 2016

Ms. Jessica Vu
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Office of Governor Greg Abbott
P.O. Box 12428
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OR2016-05875

Dear Ms. Vu:

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# 601494 (OOG ID# 15-512).

The Office of the Governor (the "governor's office") received a request for all applications for border security grants and all such grants awarded for a specified time period. You state the governor's office will release some of the requested information. You state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See id.* § 552.304(e). We have received comments from a representative for the Victoria County Sheriff's Office, the Department of Tribal Police for Ysleta Del Sur Pueblo, and the Texas Department of Public Safety ("DPS"). We have reviewed the submitted information and the submitted arguments.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 provides in 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 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 provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). 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 section 418.176 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).

DPS argues, and also submits an e-mail from the United States Customs and Border Protection (“CPB”) arguing, the submitted information is confidential under section 418.176. DPS states the submitted information “reveal[s] the staffing requirements of several law enforcement entities, and relate[s] directly to tactical plans for the providing agencies, both by themselves and in coordination with each other, state agencies, and the federal government.” DPS also states the submitted information “is related to the detection of and response to terrorism and criminal activity[.]” Upon review, we find some of the information at issue relates to the staffing requirements and tactical plan of emergency response providers, and is maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. However, upon review, we find some of the information, which we have marked, is not subject to section 418.176. Therefore, we conclude, with the exception of the information we have marked, the submitted information is confidential under section 418.176 of the Government Code and the governor’s office must withhold it under section 552.101 of the Government Code.¹

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

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). Section 552.108(b)(1) 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 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why the release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded 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), 252 (1980) (section 552.108 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.*, ORDs 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). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

DPS and CBP argue the remaining information should be withheld under section 552.108(b)(1). Having considered the arguments and reviewed the information at issue, we find DPS and CBP have failed to demonstrate release of the remaining information would interfere with law enforcement. Thus, no portion of the remaining information may be withheld under section 552.108(b)(1).

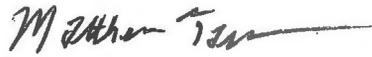
In summary, with the exception of the information we have marked, the governor’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The remaining information must be released.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MT/dls

Ref: ID# 601494

Enc. Submitted documents

c: Requestor
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