



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 11, 2016

Ms. Kristie L. Lewis  
Staff Attorney  
Houston Police Department  
1200 Travis, 21<sup>st</sup> Floor  
Houston, Texas 77002-6000

OR2016-18143

Dear Ms. Lewis:

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# 622430 (ORU No. 16-3890).

The Houston Police Department (the "department") received a request for information pertaining to named police officers and the department's automated vehicle locator during a specified time period. You state you will release some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Northrop Grumman Corporation ("Northrop"). Accordingly, you state, and provide documentation showing, you notified Northrop of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Northrop. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 143.1214 of the Local Government Code, which provides in relevant part, the following:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department’s use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The department head or the department head’s designee may forward a document that relates to disciplinary action against a fire fighter or police officer to the director or the director’s designee for inclusion in the fire fighter’s or police officer’s personnel file maintained under Sections 143.089(a)-(f) only if:

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov’t Code § 143.1214(b)-(c). You state the City of Houston is a civil service city under chapter 143 of the Local Government Code. You explain the submitted information consists of records of an internal investigation of alleged misconduct on the part of a department police officer. You state the allegations at issue were sustained, disciplinary action was taken, and all documents meeting the requirements of section 143.1214(c) were forwarded to the police officer’s personnel file maintained under section 143.089(a). *See id.* § 143.1214(b)(3), (c)(1)-(3). You inform us the information at issue is maintained in the

department's investigatory files and is not part of the officer's civil service file.<sup>2</sup> There is no indication the requestor is a representative of another law enforcement agency, a fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b)(1)-(2). Based on these representations and our review, we conclude the department must withhold Exhibit 2 under section 552.101 in conjunction with section 143.1214.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Northrop states it has competitors. In addition, Northrop states release of the information at issue would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Northrop has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have marked under section 552.104(a).<sup>3</sup>

Section 552.101 of the Government Code also encompasses information protected by section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. This provision makes certain information related to terrorism confidential. 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 a law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

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

Gov't Code § 418.176(a)(1)-(2). The fact that information may relate to a governmental body's security concerns does not make the 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). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed

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<sup>2</sup>You state the department will direct the requestor to the City of Houston Human Resources Department for further responsive information.

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain 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).

Northrop asserts the remaining information is confidential under sections 418.176(a)(1) and 418.176(a)(2) of the Government Code. However, upon review, we find Northrop has not demonstrated the remaining information at issue relates to staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency, or relates to tactical plans of emergency response providers. Accordingly, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.176.

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[.]” *Id.* § 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, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the 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 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 of the Government Code is 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). Upon review, we find Northrop has not demonstrated the release of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold the remaining information under section 552.108(b)(1).

Section 552.139 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides in part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). Northrop asserts the remaining information relates to the department's network and is excepted from disclosure under section 552.139 of the Government Code. However, upon review, we find Northrop has not demonstrated the remaining information relates to computer network security, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Further, we find Northrop has failed to explain the remaining information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Accordingly, the department may not withhold the remaining information under section 552.139 of the Government Code.

In summary, the department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. The department may withhold the information we have marked under section 552.104(a) 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](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 "Cole Hutchison", written in a cursive style.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 622430

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Parties  
(w/o enclosures)