



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2016

Ms. Jo Ann Pate  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2016-28305

Dear Ms. Pate:

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# 637111 (Request No. W055275).

The City of Fort Worth (the "city") received a request for ten categories of information regarding city records related to the acquisition of cell site simulators, x-ray vans, surveillance enabled light bulbs, and other devices. You state the city is withholding certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.107(2), 552.108, and 552.111 of the Government Code. You also state release of the information may implicate the proprietary interests of third parties.<sup>2</sup> Further, you indicate release of the submitted information may implicate the interests of the Tarrant County District Attorney's Office (the "district attorney's office"). Accordingly, you state, and provide documentation showing, you notified the third parties and the district attorney's office of the request for

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<sup>1</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including a certified agenda and tape of a closed meeting under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>The third parties are the following: Digital Stakeout, Geofeedia, KEYW Corp., MetroPCS, SCCI, SnapTrends, Vigilant Solutions, CDW-G, T-Mobile, Milestone Mobile Systems, and Campion Sales.

information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .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 the district attorney's office. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, the city states it sought clarification for a portion of the information requested. *See id.* § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). You state the requestor has not responded to the request for clarification. Accordingly, we find the city has no obligation at this time to release any information that is responsive to the portion of the request for which it has not received clarification. *See* Open Records Decision No. 663 at 5 (1999) (10-business-day deadline tolled while governmental body awaits clarification in good faith). However, if the requestor responds to the clarification, then the city must seek a ruling from this office before withholding from the requestor any information that would be responsive to the clarification.

Next, you state a portion of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-00174 (2015), 2015-04722 (2015), 2016-02873 (2016), and 2016-06744 (2016). In Open Records Letter No. 2015-00174, we determined, in part, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code and may withhold the information we indicated under sections 552.108(b)(1) and 552.111 of the Government Code. In Open Records Letter No. 2015-04722, we determined, in part, the department may withhold the submitted information under section 552.108(b)(1) of the Government Code. In Open Records Letter No. 2016-02873, we determined, in part, the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. In Open Records Letter No. 2016-06744, we determined the department must withhold the information subject to section 552.022(a)(3) in Exhibits E-1 and E-2 under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code, and with the exception of the city council meeting minutes, which

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<sup>3</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.

must be released, the department may withhold the remaining information under section 552.108(b)(1) of the Government Code. You state there has been no change in the law, facts, or circumstances on which these previous rulings were based. Accordingly, we conclude the city must rely on Open Records Letter Nos. 2015-00174, 2015-04722, 2016-02873, and 2016-06744 as previous determinations and withhold and release the identical information in accordance with these rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider the submitted arguments against disclosure for the remaining information that is not encompassed by the previous rulings.

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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find a portion of the information at issue, which we have indicated in Exhibit C-2, was used or developed in an investigation of alleged or suspected child abuse or neglect by the district attorney’s office. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. Because you do not indicate the district attorney’s office has adopted a rule governing the release of this type of information, we assume no such regulation exists. Given that assumption, we find the information at issue is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold the information we have indicated in Exhibit C-2 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.108(b) 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 (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code§ 552.108(b)(1). This section 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.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. 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).

You state the submitted information reveals specialized law enforcement investigation and communications equipment that would divulge the intricate internal workings of the city police department’s methods, techniques, and strategies for preventing and detecting crime. You assert release of the information “would permit private citizens with criminal intentions to anticipate weaknesses in [the] department, avoid detection, jeopardize officer safety, and generally undermine police efforts[.]” Thus, you claim release of this information would hinder law enforcement and put the public at risk. Based on your representations and our review, we find release of some of the information at issue would interfere with law enforcement. Accordingly, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code.<sup>4</sup> However, we find you have failed to demonstrate release of the remaining information would interfere with law enforcement or

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<sup>4</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

crime prevention. Therefore, the city may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.107(2) of the Government Code provides information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). Article 18.20 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the interception of wire, oral, or electronic communications; the installation or use of a pen register, ESN reader, trap and trace device, mobile tracking device, or similar equipment; or the disclosure of a stored communication, information subject to an administrative subpoena, or information subject to access under article 18.21 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 18.20, §§ 6, 9; *see also id.* § 1 (defining terms). Section 11 of article 18.20 states “[t]he judge shall seal each application made and order granted under this article.” *Id.* § 11. Article 18.21 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment. *See id.* art. 18.21, § 2; *see also id.* § 1 (defining terms). Article 18.21 also permits a court to issue an order authorizing the disclosure of contents, records, or other information of a wire or electronic communication. *See id.* § 5. Section 2 of article 18.21 states the court “shall seal an application and order granted under this article.” *Id.* § 2(g). In this instance, a portion of the submitted information consists of court orders granted under articles 18.20 and 18.21. The orders reflect they are filed under seal. As the documents at issue have been sealed by a court pursuant to articles 18.20 and 18.21, we conclude the city must withhold the information we have indicated under section 552.107(2) of the Government Code.<sup>5</sup>

Section 552.101 of the Government Code also encompasses section 418.176 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.176(a) reads as follows:

(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:

...

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

Gov’t Code § 418.176(a)(2). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

section 418.176. *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 418.176 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 remaining information relates to security equipment utilized by the city's police department to prevent, detect, and respond to terroristic and criminal activities. However, upon review, we find you have failed to establish the information at issue was collected, assembled, or maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and relates to a tactical plan of the provider. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

Finally, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from any of the third parties. Thus, these third parties have not demonstrated the companies have protected proprietary interests in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold the any portion of the remaining information on the basis of any proprietary interests any of the third parties may have in the information.

In summary, the city must continue to rely on Open Records Letter Nos. 2015-00174 (2015), 2015-04722 (2015), 2016-02873 (2016), and 2016-06744 (2016) as previous determinations and withhold and release the requested information in accordance with those rulings. The city must withhold the information we have indicated in Exhibit C-2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The city must withhold the information we have marked under section 552.107(2) of the Government Code. The city 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](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 that reads "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/som

Ref: ID# 637111

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

10 Third Parties  
(w/o enclosures)