



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2015

Mr. Galen Gatten
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-09749

Dear Mr. Gatten:

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# 564303 (Fort Worth Information Request No. W040786).

The City of Fort Worth (the "city") received a request for live lineup and photograph lineup identification procedures maintained by the city's police department. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note portions of the requested information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-08505 (2015), 2013-18471 (2013), 2009-02037 (2009), 2006-11052 (2006), and 2003-1908 (2003). We have no indication the law, facts, and circumstances on which these rulings were based have changed. Accordingly, for the submitted information that is identical to the information previously requested and ruled upon by this office, the city must continue to rely on Open Records Letter Nos. 2015-08505, 2013-18471, 2009-02037, 2006-11052, and 2003-1908 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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). To the extent the requested information is not encompassed by the previous rulings, we will consider the submitted arguments against disclosure.

Next, we note you seek to withhold the submitted information under section 552.108 of the Government Code. Section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, to the extent the information we previously ruled that you must release is identical to the submitted information, the city may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential under law. Because section 552.108 does not prohibit the release of information or make information confidential, the city may not now withhold any previously released information under this exception. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Thus, the city may not now withhold any of the previously released information under section 552.108. However, because section 552.101 can make information confidential for the purposes of section 552.007, we will address your arguments under section 552.101 of the Government Code. Additionally, we will address your argument under section 552.108 for any submitted information not subject to the prior rulings.

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). 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 that 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).

You state the submitted information consists of “specific law enforcement investigation . . . techniques that would divulge the intricate internal workings of the [c]ity Police Department’s methods, techniques, and strategies for preventing and detecting crime[.]” You contend release of the information would interfere with law enforcement efforts because it “would permit private citizens with criminal intentions to anticipate weakness in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” Based on these arguments and our review, we agree release of some of the information, which we have marked, 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.¹ However, we find you have not demonstrated how release of any of the remaining information would interfere with law enforcement or crime prevention. Consequently, the city may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

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 the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. Section 418.177 of the Government Code provides, in relevant part:

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

¹As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. The fact that information may relate to a governmental body's security measures 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 of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.177 must be accompanied by an adequate explanation of 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).

You seek to withhold some of the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. Upon review, however, we find the city has failed to establish the remaining information was collected, assembled, or is maintained by or for the city for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity for purposes of section 418.177. Thus, the city has not established the applicability of section 418.177 of the Government Code to the remaining information at issue, and the city may not withhold the information under section 552.101 of the Government Code on that basis.

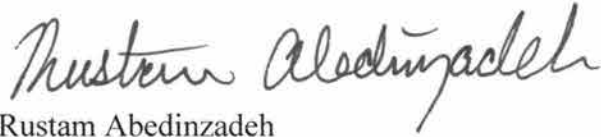
In summary, to the extent the submitted information is identical to information previously requested and ruled upon by this office, the city must rely on Open Records Letter Nos. 2015-08505, 2013-18471, 2009-02037, 2006-11052, and 2003-1908 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. The city may withhold the information we have marked under section 552.108(b)(1) 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, 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 "Rustam Abedinzadeh". The signature is fluid and cursive, with the first name "Rustam" and last name "Abedinzadeh" clearly distinguishable.

Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 564303

Enc. Submitted documents

c: Requestor
(w/o enclosures)