



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2015

Ms. Lacey B. Lucas
Assistant District Attorney
County of Dallas
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202-3317

OR2015-18170

Dear Ms. Lucas:

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# 577449.

Dallas County (the "county") received a request for information pertaining to elevators in the Lew Sterret North Jail Tower (the "jail").¹ You inform us most of the responsive information will be released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we must address the county's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a

¹As you have not submitted a copy of the written request for information, we take our description from your brief.

²We 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.

governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the county received the request on June 10, 2015. As of the date of this ruling, the county has not submitted a copy of the request for information. Consequently, the county failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.107, 552.108, and 552.111 of the Government Code for the submitted information, these exceptions are discretionary in nature and serve only to protect a governmental body's interests, and thus may be waived. As such, they do not constitute compelling reasons to withhold information. *See* Open Records Decision Nos. 676 at 6 (2002) (section 552.107(1) is not other law for purposes of section 552.022), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the county has waived its claims under sections 552.107, 552.108, and 552.111 for the submitted information. Accordingly, no portion of the submitted responsive information may be withheld under these exceptions. However, sections 552.101 and 552.117 of the Government Code make information confidential under the Act, and thus, constitute compelling reasons to withhold information.³ We will therefore address the applicability of these exceptions to 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 section encompasses information made confidential by other statutes.

³This office will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181. 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 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 one of the confidentiality provisions of the HSA 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).

The county contends that some of the submitted information consists of diagrams of control panels in the jail and other information, the release of which could jeopardize jail security and aid persons seeking to use the information to plan escape. Upon review, we conclude the jail constitutes “critical infrastructure” for the purposes of section 418.181. *See id.* § 421.001 (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). Based on the county’s representations and our review, we find the county has demonstrated portions of the submitted information, which we have marked, are confidential under section 418.181 of the Government Code. Accordingly, the county must withhold the marked information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer’s home address and telephone number, social security number, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. *Id.* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). In this instance, it is unclear whether the information we have marked pertains to currently licensed peace officers as defined by article 2.12. Accordingly, if the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, then the county must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the county may only withhold the

marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. If the individuals at issue are not licensed peace officers, then the county may not withhold the information we have marked under section 552.117(a)(2).

If the individuals at issue are not licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. As noted above, section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the cellular telephone numbers may only be withheld if the telephone services are not paid for by a governmental body. To the extent the individuals at issue did not timely request confidentiality under section 552.024 or the cellular telephone services are paid for by a governmental body, the county may not withhold the information we marked under section 552.117(a)(1).

In summary, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. If the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, then the county must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the county may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. If the individuals at issue are not licensed peace officers, then the county must withhold the information we marked under section 552.117(a)(1) of the Government Code if the individuals at issue timely requested confidentiality under section 552.024 of the Government Code. The county must withhold the additional information we have marked under section 552.117(a)(1) if timely elections were made. However, the county may withhold the cellular telephone numbers only if the cellular telephone services are not paid for by a governmental body. The county 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 "Michael A. Pearle". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 577449

Enc. Submitted documents

c: Requestor
(w/o enclosures)