



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 11, 2015

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2015-19006

Dear Ms. Grace:

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# 581208 (PIR# 814336).

The Austin Police Department (the "department") received a request for (1) all e-mails sent to or from SnapTrends, Inc. ("SnapTrends") during a specified time frame; (2) copies of all contracts between the department and SnapTrends during the specified time frame; and (3) all invoices, receipts, purchase orders, and requests for offer between the department and SnapTrends during the specified time frame. You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note you have submitted information responsive to only a portion of the request. You have not submitted any information responsive to the portions of the request seeking copies of contracts between the department and SnapTrends or invoices, receipts, purchase orders, and requests for offer between the department and SnapTrends. Although you state the department has submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised this open records letter applies to only the types of information you have submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the type of

information you submitted to this office. *See* Gov't Code § 552.302. Therefore, to the extent any additional responsive information existed and was maintained by the department on the date it received the request, we assume the department has released it to the requestor. If the department has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), 302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we address your argument the information you have marked is not subject to disclosure under the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body;
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information that is made public under section 552.021. *See* ORD 581 at 6 (construing predecessor statute). You contend the information at issue is not public information, as defined by section 552.002. Based on your representation and our review, we agree the usernames and passwords in the submitted information are not public information for the purposes of section 552.002 and, thus, are not subject to disclosure under the Act. *See* Gov't Code § 552.021. Therefore, the usernames and passwords need not be released in response to this request for information. However, we note the remaining

information you have marked was written, produced, collected, assembled, or maintained in connection with the transaction of official business by or for the department. Thus, this information is subject to the Act and the department must release it unless it falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. *Id.* § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301 (e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. 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." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (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).

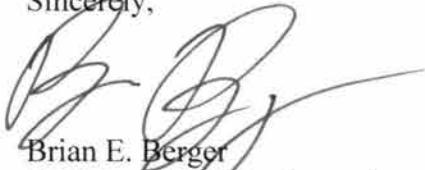
You state the information you have marked "reflects details concerning specific law enforcement investigative tools and techniques the department has and will continue to utilize [sic] when conducting criminal investigations." You further state "release of the information in question would reveal specific details about the technological tool, including strengths and limitations," which "would interfere with the department's ability to utilize this investigative tool." Based on your representations and our review, we agree release of the information we have marked would interfere with law enforcement. Accordingly, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate how the release of the remaining information would interfere with law enforcement and crime prevention. Accordingly, the department may not withhold any of the remaining information under section 552.108(b)(1).

In summary, the usernames and passwords in the submitted information are not public information and the department need not release them in response to this request for information. The department may withhold the information we have marked under section 552.108(b)(1) 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,

A handwritten signature in black ink, appearing to read "Brian E. Berger", is written over the typed name.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 581208

Enc. Submitted documents

c: Requestor
(w/o enclosures)