



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2017

Mr. Jonathan L. Almanza
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 East Cano
Edinburg, Texas 78539

OR2017-01088

Dear Mr. Almanza:

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# 641853 (ORR# 2016-0128-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for specified information pertaining to the Operation Stonegarden Grant (the "grant"). The sheriff's office claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. The sheriff's office has also submitted correspondence from the United States Customs and Border Protection (the "CBP") objecting to the release of the requested information. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

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

¹We 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 those records contain substantially different types of information than that submitted to this office.

notation would interfere with law enforcement or prosecution[.]” *Id.* § 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) exempts 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).

The submitted information consists of two documents related to the grant that are titled (1) United States Homeland Security Bureau of Customs and Border Protection Operations Order Report (the “operations order report”); and (2) Office of the Governor Criminal Justice Division & Homeland Security Grant Division Grantee Conditions and Responsibilities. The sheriff’s office explains the submitted information pertains to a joint operation between the CBP and local law enforcement agencies. The CBP objects to the release of the submitted information because “the records address administration and logistics and command, control, and communication of [Operation Stonegarden], including equipment, officer assignments, communications networks[,], as well as the methods by which state and local providers will coordinate with [federal agencies].” The CBP also asserts the records directly relate to its internal tactical procedures, reveal its operational budget, and list the names and telephone numbers of each operation participant. The sheriff’s office asserts “[t]his information can be essential for criminals or suspects attempting to anticipate weakness or avoid detection from law enforcement” and argues its disclosure “could allow private citizens to become aware of specific time frames to commit crimes in order to avoid detection.” Upon review, we find the sheriff’s office has established release of the operations order report would interfere with law enforcement. Therefore, the sheriff’s office may withhold the operations

order report under section 552.108(b)(1) of the Government Code.² However, we conclude the sheriff's office has not established the release of the remaining document would interfere with law enforcement. Therefore, the sheriff's office may not withhold the remaining document under section 552.108(b)(1).

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 section 418.176(a), which provides as follows:

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 the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider[.]

Id. § 418.176(a). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under section 418.176. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.176(a) must adequately explain how the responsive information falls within the scope of the provisions. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

In addition to the arguments noted above, the sheriff's office asserts the remaining information is confidential under section 418.176(a) because it "was created for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity by multiple law enforcement agencies" and includes "operational and tactical plans as it relates to the assignment of officers and the duties and limitations of the investigators and the specific divisions." However, upon review we find the sheriff's office and the CBP have not demonstrated the remaining information was created for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity; that it relates to the staffing requirements or tactical plan of an emergency response provider; or

²As our ruling is dispositive, we do not address the other argument of the sheriff's office to withhold this information.

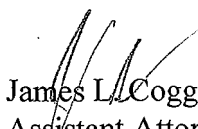
that it consists of a list or compilation of pager or telephone numbers of an emergency response provider. Consequently, the remaining information is not confidential under section 418.176(a), and the sheriff's office may not withhold it under section 552.101 on that ground.

To conclude, the sheriff's office may withhold the operations order report under section 552.108(b)(1) of the Government Code. The sheriff's office 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 641358

Enc. Submitted documents

c: Requestor
(w/o enclosures)