



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 16, 2017

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2017-05454

Dear Ms. Armstrong:

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# 649043 (ORR# 2016-29372).

The Dallas Police Department (the "department") received a request for information pertaining to the staffing of a specified event during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹Although you also raise section 552.101 of the Government Code in conjunction with the common-law physical safety exception, you provide no arguments explaining how this doctrine applies to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, .302.

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

interfere with law enforcement and crime prevention. Gov't Code § 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 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, 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). 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 portions of the submitted information, if released, would interfere with law enforcement or prosecution of crime. You state release of the information at issue would “disclose the tactics, staffing, equipment, and intelligence used in the [department’s] efforts to detect and prevent criminal activity[.]” Based on your representations and our review, we agree the release of some of the information at issue, which we marked, would interfere with law enforcement. Accordingly, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code.³ However, we find you have not demonstrated release of any of the remaining information you marked would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining information it marked under section 552.108(b)(1).

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 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 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records

³As our ruling is dispositive, we need not address your remaining argument against disclosure of the information at issue.

Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). You have marked information under section 552.117 that consists of the personal information of peace officers who were employed by the department and the information is held in the employment context. In this instance, however, it is unclear whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the department must withhold the information you marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individuals whose information is at issue are no longer licensed peace officers as defined by article 2.12, then the department may not withhold the marked information under section 552.117(a)(2).

If the information you marked under section 552.117 pertains to individuals who are no longer licensed peace officers, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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 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). 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* ORD506 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 be withheld under section 552.117(a)(1) only 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individuals at issue are no longer peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information you marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individuals at issue are no longer peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, the department may not withhold the marked information under section 552.117(a)(1).

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code

§ 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). We understand the employee identification numbers you marked are used in conjunction with one additional digit to access city credit union bank accounts. Therefore, the department must withhold the information you marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses you marked and we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 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 provides, in relevant part:

(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:

- (1) relates to 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.

Gov’t Code § 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 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 “pertains to . . . staffing and is integral to the [department’s] plan to prevent, detect, investigate, and respond to any report of terrorism or other related criminal activity[.]” Upon review, however, 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 the staffing requirements, relates to a tactical plan, or consists of a list or compilation of pager or telephone numbers of an emergency response provider. Therefore, the department 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.

In summary, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. To the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. To the extent the individuals at issue are no longer peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the marked information under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The department must withhold the information you marked under section 552.136 of the Government Code. The department must withhold the personal e-mail addresses you marked and we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The department 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 that reads "Jennifer Copeland". The signature is written in a cursive style with a large initial "J".

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/sb

Ref: ID# 649043

Enc. Submitted documents

c: Requestor
(w/o enclosures)