



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 3, 2017

Ms. Dylbia L. Jefferies Vega  
Civil Litigation Division  
Cameron County  
11000 East Monroe Street  
Brownsville, Texas 78521

OR2017-09536

Dear Ms. Vega:

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# 655935.

Cameron County (the "county") received a request for eight categories of information pertaining to a specified program. You state you have released most of the requested information. You state you have no responsive information pertaining to a portion of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You have 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 submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We 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.

Initially, we note the CBP seeks to withhold information not submitted to this office by the county. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the county, this ruling does not address this information and is limited to the information submitted as responsive by the county.

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. This section encompasses information protected by other statutes, such as section 418.176(a) of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act and 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).

You explain the submitted information pertains to a joint operation between the CBP and local law enforcement agencies. You state the submitted information contains the geographical areas the law enforcement agencies will be patrolling and the types of equipment used by each law enforcement agency. The CBP further argues the submitted information is related to its mission of “preventing, detecting, responding to, or investigating [acts] of terrorism or related criminal activity,” which includes securing the nation’s borders and protecting the public. The CBP asserts the submitted information details its concept of the operation and execution of the plan for border security operations, and reveals the

organization and distribution of the CBP units, resources, and operations strategy. Upon review, we find you have demonstrated some of the information at issue is 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 or tactical plan of an emergency response provider. Therefore, with the exception of the information we have marked for release, we conclude the submitted information is confidential under section 418.176 of the Government Code, and the county must withhold it under section 552.101 of the Government Code. However, we find you have not demonstrated the remaining information was collected, assembled, or maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and that it relates to the staffing requirements or tactical plan of an emergency response provider or 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 county may not withhold it under section 552.101 on that ground.

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 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) excepts 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 CBP argues release of the remaining information would “reveal law enforcement strategy and permit individuals to circumvent the law.” The CBP further argues release of the remaining information “could allow traffickers, terrorists, and other criminals to identify vulnerabilities and avoid detection.” However, upon review, we conclude the CBP has not established the release of the remaining information would interfere with law enforcement. Therefore, the county may not withhold the remaining information under section 552.108(b)(1).

In summary, with the exception of the information we have marked for release, the county must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. 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](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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/nmd

Ref: ID# 655935

Enc. Submitted documents

c: Requestor  
(w/o enclosures)