



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 16, 2017

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

OR2017-13355

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# 662068 (ORR# C002241).

The City of Dallas (the "city") received a request for information related to case number 055856-2017, investigations into the deaths of two named individuals, documents regarding an issue involving T-Mobile callers and the city's 9-1-1 call center, and policies related to the issue. The city claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. Additionally, the city indicates release of the submitted information may implicate the proprietary interests of T-Mobile USA, Inc. ("T-Mobile"). Accordingly, we understand the city notified T-Mobile of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from T-Mobile. We have reviewed the submitted arguments and the submitted representative sample of information.<sup>1</sup>

Initially, the city states some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter

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<sup>1</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 those records contain substantially different types of information than that submitted to this office.

Nos. 2017-12007 (2017), 2017-13350 (2017), and 2017-13348 (2017). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the city must rely on Open Records Letter Nos. 2017-12007, 2017-13350, and 2017-13348 as previous determinations and withhold the information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note some of the submitted information, which we have marked, was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-13349 (2017). In that ruling, we determined the city must withhold the portions of the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code and must release the remaining information at issue. The city now seeks to withhold the information at issue under section 552.111 of the Government Code. Section 552.007 provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential by law. As noted above, the city claims section 552.111 for the information we marked. Section 552.111 does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Further, the city does not raise any additional arguments to withhold the portions of the information at issue that were previously ordered to be released. Thus, the city must rely on Open Records Letter No. 2017-13349 as a previous determination and withhold or release the information we marked in accordance with that ruling. *See* ORD 673.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

- (a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Some of the submitted information, which the city marked, was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the city's police department (the "department"). *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The city does not indicate the department has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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. 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.*, Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of

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<sup>2</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The city states the remaining information, if released, would interfere with law enforcement or prosecution of crime. The city explains the information at issue, which it marked, reveals the operations of the city's 9-1-1 call center. The city argues release of the information at issue would adversely affect the operations of the 9-1-1 call center by allowing adversaries, attackers, and activists to learn the operating procedures of the 9-1-1 call center. The city argues such information could be used to manipulate the response or deployment of resources to an act of terrorism or criminal activity. Based on these representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, the city may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find the city has not demonstrated release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the city may not withhold any of the remaining information at issue under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential, including section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. 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 law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

*Id.* § 418.176(a)(1)-(2). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *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 this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The city asserts the remaining information directly relates to the staffing requirements of an emergency response provider. Upon review, we find the city has not demonstrated any of the remaining information relates to staffing requirements of an emergency response provider. Further, we find the city has not demonstrated the remaining information relates to a tactical plan of an emergency response provider. Thus, the city may not withhold any

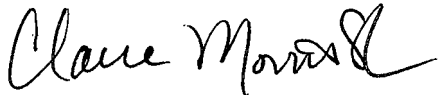
of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the city must rely on Open Records Letter Nos. 2017-12007, 2017-13350, and 2017-13348 as previous determinations and withhold or release the information in accordance with those rulings. The city must rely on Open Records Letter No. 2017-13349 as a previous determination and withhold or release the information we marked in accordance with that ruling. The city must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city may withhold the information we marked under section 552.108(b)(1) of the Government Code. The city 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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 662068

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)