



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 10, 2017

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2017-15264

Dear Mr. Kopp:

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# 665364 (COSA File No. W164861).

The City of San Antonio (the "city") received requests for (1) blank Suspicious Activity Report (SAR) forms previous or presently used by the Southwest Texas Fusion Center, (2) all SARs filed between January 2004 and December 2016, (3) all SARS entered into Guardian or e-Guardian systems in the Southwest Texas Fusion Center, (4) any threat reports created and/or compiled by the Southwest Texas Fusion Center, (5) all ShotSpotter sensor locations in East and West San Antonio, (6) all documentation and/or reports from ShotSpotter about ShotSpotter technology and/or sounds captured by sensors in San Antonio, and (7) a list of cases in which ShotSpotter data has been utilized. You state you released some information. You claim some the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. Code. You also state release of some of the submitted information may implicate the proprietary interests of ShotSpotter, Inc. ("ShotSpotter"). Accordingly, you notified this third party of the request for information and of the company's 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 Act in certain circumstances). We have received comments from ShotSpotter,

which does not object to release of the information at issue. We have considered the submitted arguments and reviewed the submitted representative samples of information.<sup>1</sup>

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 information made confidential by other statutes. Part 23 of title 28 of the Code of Federal Regulations was established to regulate intelligence databases pertaining to certain criminal activities that involve a large number of participants over a broad geographical area. *See* 28 C.F.R. § 23.2 (background of part 23). The policy standards of part 23 are applicable to all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3711 *et seq.* *Id.* § 23.3(a); 42 U.S.C. § 3714a(c) (United States Attorney General shall define data elements to be used by database funded by section 3714a so information can be shared with states and Department of Justice). For purposes of part 23, an intelligence project “means the organizational unit which operates an intelligence system on behalf of and for the benefit of a single agency or the organization which operates an interjurisdictional intelligence system on behalf of a group of participating agencies[.]” 28 C.F.R. § 23.3(b)(5). For purposes of part 23, a criminal intelligence system “means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information[.]” *Id.* § 23.3(b)(1). The release of criminal intelligence information by an intelligence project or an authorized recipient is governed by section 23.20 of part 23, which provides, in relevant part,

(e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.

(f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.

(2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

*Id.* § 23.20(e)-(f). For purposes of section 23.20, “criminal intelligence information” means “data which has been evaluated to determine that it: (i) [i]s relevant to the identification of

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

and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity, and (ii) [m]eets criminal intelligence system submission criteria[.]” *Id.* § 23.3(b)(3). You state some of the submitted information is maintained within the eGuardian system. You explain the eGuardian system was created and is maintained by the federal government, and is a project subject to section 23.20 of title 28 of the Code of Federal Regulations. We note the request seeks information entered into the eGuardian system by the Southwest Texas Fusion Center. You explain the Southwest Texas Fusion Center is a joint operation between law enforcement agencies with the goal to gather, document, process, analyze, and share information about behavior-related suspicious activities that potentially have a nexus to terrorism. Thus, we understand the some of the submitted information is maintained in a criminal intelligence system subject to section 23.20. Based on this understanding, we conclude the information at issue is confidential under section 23.20 and may be released only in accordance with that section. The requestor is not a law enforcement authority. *See id.* § 23.20(f)(1). In addition, the requestor does not have a right to know the information at issue for purposes of section 23.20(e), and we have no indication the release of the information is necessary to avoid imminent danger to life or property. *Id.* § 23.20(f)(2). Therefore, we conclude the information at issue is confidential pursuant to section 23.20 of title 28 of the Code of Federal Regulations and section 4314a of title 42 of the United States Code, and the city must withhold it under section 552.101 of the Government Code.

Next, we address your arguments for the remaining information. Section 552.108(b)(1) 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 . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (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 the release of the information at issue would interfere with law enforcement and prosecution. Based on your arguments and our review of the information at issue, we agree release of the information we marked would interfere with law enforcement. Accordingly, the city may withhold the information we marked under section 552.108(b)(1).<sup>2</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state some of the remaining information pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to the remaining information at issue.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the city may withhold the remaining information at issue under section 552.108(a)(2).

You raise section 552.101 in conjunction with a provision of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code for some of the remaining information. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.176(a) of the Government Code provides:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing,

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

detecting, responding to, or investigating an act of terrorism or related criminal activity and:

...

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

Gov't Code § 418.176(a). Section 418.180 of the Government Code, provides:

Information, other than financial information, in the possession of a governmental entity is confidential if the information:

- (1) is part of a report to an agency of the United States;
- (2) relates to an act of terrorism or related criminal activity; and
- (3) is specifically required to be kept confidential:
  - (A) under Section 552.101 because of a federal statute or regulation;
  - (B) to participate in a state-federal information sharing agreement; or
  - (C) to obtain federal funding.

*Id.* § 418.180. The fact that information may be related to a governmental body's security concerns or emergency preparedness does not make such information *per se* confidential under the HSA. *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 exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

Upon review, we find you have not demonstrated the remaining information was collected, assembled, or maintained for the purposes of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and that it relates to the tactical plan of an emergency response provider. Further, we find you have failed to establish any of the remaining information relates to an act of terrorism or related criminal activity and is required to be kept confidential under section 552.101 of the Government Code because of a federal statute or regulation, to participate in a state-federal information sharing agreement,

or to obtain federal funding. Consequently, the remaining information is not confidential under section 418.176(a) or section 418.180, and the city may not withhold it under section 552.101 on either of these bases.

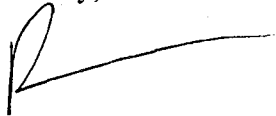
We note some of the remaining information appears to be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 23.20 of title 28 of the Code of Federal Regulations and section 4314a of title 42 of the United States Code. The city may withhold the information we marked under section 552.108(b)(1) of the Government Code. With the exception of basic information, which must be released, the city may withhold the information it marked under section 552.108(a)(2) of the Government Code. The city must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,



Patrick P. Mehaffy  
Attorney  
Open Records Division

PPM/eb

Ref: ID# 665364

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)